

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

DePuy Mitek, Inc.	)	
a Massachusetts Corporation	)	
	)	
Plaintiff.	)	
	)	
v.	)	Civil No. 04-12457 PBS
	)	
Arthrex, Inc.	)	
a Delaware Corporation, and	)	
	)	
Pearsalls Ltd.	)	
a Private Limited Company	)	
of the United Kingdom	)	
	)	
Defendants.	)	

**Plaintiff DePuy Mitek's Memorandum In Support Of Motion *In Limine* (No. 5)**  
**To Preclude Arthrex And Pearsalls From Making Irrelevant and**  
**Prejudicial Remarks About Mitek**

**I. Introduction**

This trial is about the limited and straightforward issue of whether Arthrex's FiberWire suture infringes claims in Mitek's Hunter 446 Patent. All that is necessary to determine infringement is to compare the accused FiberWire suture to the claims of Mitek's Hunter 446 Patent claims. But from Arthrex's pretrial exchanges (*e.g.*, deposition designations, exhibit list), briefs, and comments at hearings, it appears that Arthrex intends to litter the record with derogatory missives about: (1) when and how Mitek learned about the Hunter 446 Patent; (2) the Hunter 446 Patent being a paper patent because Mitek does not sell a product covered by the patent; and (3) Mitek's development of its competing Orthocord product. None of these issues is relevant to the infringement issue, and it appears that Arthrex wants to raise them to deflect attention from the infringement issue and to portray Mitek in a negative light. Accordingly,

Arthrex should be precluded from presenting evidence and argument on these matters under FED. R. EVID. 401 and 402.

## II. Argument

### A. Arthrex Should Not Be Permitted To Disparage Mitek's Hunter 446 Patent As A "Paper Patent" on the Grounds That Mitek Does Not Sell A Product Covered By The Patent

Whether Mitek sells a product covered by its Hunter 446 Patent is irrelevant to the infringement issue. The patent rights confer on a patentee a right to exclude and do not require a patentee to commercialize a patented invention. *Rite-Hite Corp. v. Kelley Co., Inc.*, 56 F.3d 1538, 1547 (Fed. Cir. 1995) (*en banc*). Nonetheless, Arthrex has demonstrated a predilection for describing Mitek's Hunter 446 Patent in impliedly negative terms. For example, in their Memorandum In Support Of Defendants Arthrex, Inc.'s And Pearsalls Ltd.'s Motion For Summary Judgment, the opening page includes the following:

Mitek's 446 Patent is a paper patent; neither Ethicon nor DePuy Mitek had made a single commercial product under that patent.

(D.I. 40 at 1). Again, at the June 19, 2007 summary judgment hearing, Arthrex's counsel again referred to Mitek not manufacturing a commercial product under the Hunter 446 Patent (Ex. 1 at 14:7-11). It is not a stretch, therefore, to predict that Arthrex and Pearsalls will seek to describe the patent in a similar manner when arguing to the jury.

Of course, whether or not Mitek is practicing the invention of the Hunter 446 Patent is wholly irrelevant to the sole issue being tried, infringement. Further, even if the validity of the Hunter 446 Patent were some how in issue, Arthrex's aspersions would be inappropriate. Patents are not more or less valid depending on whether the patent-holder has used the claimed invention commercially. *Special Equip. Co. v. Coe, Commissioner of Patents*, 324 U.S. 370, 378-79 (1945) ("This Court has consistently held that failure of the patentee to make use of a

patented invention does not affect the validity of the patent.” (citing *Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U.S. 405, 425 (1908); *Crown Die & Tool Co. v. Nye Tool Works*, 261 U.S. 24, 34 (1923); *Woodbridge v. United States*, 263 U.S. 50, 55 (1923); *Fox Film Corp. v. Doyal*, 286 U.S. 123, 127 (1932); *Hartford-Empire Co. v. United States*, 323 U.S. 386, 433 (1945))).

[T]he fact that plaintiff had not put the patent into commercial use does not deprive it of validity. We are not impressed by the defendant’s contention that it is a mere ‘paper patent.’ Lack of commercial success does not of itself establish lack of invention or preclude enforcement of a patent.

*Aerosol Research Co. v. Scovill Mfg. Co.*, 334 F.2d 751, 756 (7<sup>th</sup> Cir. 1964) (cites omitted).

“The phrase, ‘paper patent,’ is a mere bit of rhetoric. . . . It is a meaningless platitude.” *Frank B. Killian & Co. v. Allied Latex Corp.*, 188 F.2d 940, 942 (2d. Cir. 1951).

While legally irrelevant, if presented in a derisive tone, the fact that a patent owner does not manufacture under a patent could be viewed by an uneducated juror as making that patent somehow less worthy and could prejudice the infringement determination. As the Supreme Court has stated, Congress made a conscious decision *not* to condition the grant of a patent upon use of the patented invention. *Special Equip. Co.*, 324 U.S. at 378-79. It is not for the jury to weigh these considerations for itself.

Consequently, Mitek’s decision not to manufacture a product falling within the scope of its Hunter 446 Patent claims has no proper bearing on the infringement issue, and references to that situation, or descriptions of Mitek’s Hunter 446 Patent as being a “paper” patent or something similar, can only cause unnecessary prejudice. Thus, such references and descriptions should be precluded under FED.R.EVID. 401 and 402.

**B. Arthrex Should Be Precluded From Presenting Evidence And Argument About Mitek's Development and Sales Of Its Orthocord Product**

Arthrex's Exhibit List lists a wealth of documents about Orthocord's development (Ex. 2 at highlighted portions). But Mitek's development of Orthocord sutures to compete with FiberWire, and the timing of that development, have nothing whatsoever to do with the infringement issue. Orthocord is not covered by Mitek's Hunter 446 Patent because it contains certain bioabsorbable materials which are excluded from the patent claims. Orthocord has a different construction than FiberWire in that it uses different materials, manufacturing processes, and amounts of materials (D.I. 40 at Ex. 5 at DMI 0039559). Indeed, Mitek considers Orthocord to be an improvement over the invention claimed in its Hunter 446 Patent and has filed patents directed to the Orthocord technology. Nothing about the development of Orthocord is relevant to the infringement issue. But Arthrex's briefs and pretrial exchanges demonstrate that Arthrex intends to use Mitek's development of Orthocord to somehow malign Mitek or confuse the jury.<sup>1</sup>

For example, page 1 of Arthrex's first summary judgment brief on infringement highlights this (D.I. 40 at 1). Arthrex refers to Mitek documents to suggest that Mitek introduced Orthocord only because of competition from Fiberwire (*id.* at Ex. 5). Arthrex also points to a document in which Mitek makes reference to a "me too" product, improperly suggesting that Mitek wanted to copy FiberWire (*id.*). Arthrex also designated testimony on the "me too" issue (Ex. 3 at 45-46). But these snippets from documents and testimony do not tell the whole story. Mitek was responding to market conditions when it decided to develop Orthocord – a product very different from FiberWire (Ex. 4 at 87:22-88:8).

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<sup>1</sup> Arthrex's designated testimony from Mitek's Neil Weber and Shelby Cook about the development of Orthocord (Ex. 4 at 88-90; Ex. 5 at 58-59 & 145-148 – highlighted portions are Arthrex's deposition designations). Further, at least 15% of the documents on Arthrex's exhibit list relate to Orthocord (Ex. 2 – highlighted portions relate to Orthocord)

In any event, Mitek's decision to develop Orthocord has absolutely nothing to do with determining whether FiberWire infringes Mitek's 446 Patent. Arthrex's reasons for latching on to this is for the sole purpose of trying to portray Mitek in a negative light so that it can deflect attention away from the infringement issue and prejudice the infringement determination. Under the circumstances, Arthrex should be precluded from presenting any argument or evidence about Orthocord's development to the jury under FED. R. EVID. 401 and 402.

Further, the Orthocord development documents should be excluded under FED. R. EVID. 403 because there is a substantial risk of prejudice and jury confusion. Since the infringement issue is decided by comparing the 446 Patent to Arthrex's FiberWire product, the research and development of Orthocord can only confuse the jury and prejudice Mitek that the jury would reach a verdict that is based on irrelevant evidence.

**C. Arthrex Should Be Precluded From Presenting Evidence And Argument About The Circumstances Surrounding Mitek Bringing Suit Against Arthrex**

That Mitek was not the original assignee of the Hunter 446 Patent is irrelevant to the infringement determination. But nonetheless, it is expected that Arthrex will try to malign Mitek by arguing about the facts and circumstances leading up to this lawsuit.

For example, in its summary judgment briefing, Arthrex argued that Mitek rummaged around its files to find a patent so that it could sue Arthrex, and when it could not find one, it acquired one from "a sister company that is part of the Johnson & Johnson empire"(D.I. 40 at 1). This kind of rhetoric has no place in an infringement trial (or any trial).

Further, the facts are that Mitek is a stand-alone company in the DePuy, Inc. franchise. Before that, Mitek was a wholly-owned subsidiary of Ethicon, Inc. – the original assignee of the Hunter 446 Patent. When Mitek became a stand-alone company in December 2003, the Hunter 446 Patent was eventually assigned to it since it was the real party in interest for this technology

(Ex. 6 at 184:17-185:11; Ex. 7 at 154-156; Ex. 4 at 47:5-49:20). There was no sinister motive here.

But as noted above, it is expected that Arthrex will spin its own story about Mitek's ownership of the Hunter 446 Patent. Arthrex's "story," even if it were true (and it is not), has no possible relevance to determining whether FiberWire infringes the Hunter 446 Patent. The only possible reason for Arthrex to make this argument is to try to malign Mitek in front of the jury and to prejudice the infringement determination. Accordingly, Arthrex should be precluded from presenting evidence and argument on these issues to the jury under FED. R. EVID. 401 and 402.

Dated: July 13, 2007

DEPUY MITEK, INC.,  
By its attorneys,

/s/ Michael J. Bonella \_\_\_\_\_  
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617-439-2000

**CERTIFICATE OF SERVICE**

I certify that I am counsel for DePuy Mitek, Inc. and that true and correct copies of:

**Plaintiff DePuy Mitek's Motion *In Limine* (No. 5) To Preclude Arthrex And Pearsalls From Making Irrelevant and Prejudicial Remarks About Mitek; and**

**Plaintiff DePuy Mitek's Memorandum In Support Of Motion *In Limine* (No. 5) To Preclude Arthrex And Pearsalls From Making Irrelevant and Prejudicial Remarks About Mitek**

were served on counsel for Defendants Arthrex, Inc. and Pearsalls Ltd. on this date via the Court's e-mail notification with the following recipients being listed as filing users for Defendants:

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Dated: July 13, 2007

/s/ Erich M. Falke  
Erich M. Falke





# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

DePUY MITEK, INC.,	)	
a Massachusetts Corporation,	)	
	)	
Plaintiff	)	
	)	
-VS-	)	CA No. 04-12457-PBS
	)	Pages 1 - 35
ARTHREX, INC.,	)	
a Delaware Corporation,	)	
and Pearsalls Ltd.,	)	
a Private Limited Company	)	
of the United Kingdom,	)	
	)	
Defendants	)	

MOTION HEARING

BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

DIANNE B. ELDERKIN, ESQ. and MICHAEL J. BONELLA, ESQ.,  
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Plaintiff.

CHARLES W. SABER, ESQ. and SALVATORE P. TAMBURO, ESQ.,  
Dickstein Shapiro, LLP, 1825 Eye Street, N.W., Washington,  
D.C., 20006-5403, for the Defendants.

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts  
June 19, 2007, 2:50 p.m.

LEE A. MARZILLI  
OFFICIAL COURT REPORTER  
United States District Court  
1 Courthouse Way, Room 3205  
Boston, MA 02210  
(617)345-6787

1 and some not, right?

2 MR. SABER: Never, it never ever says that. It  
3 never ever says that. It never ever questions the  
4 universally known fact that coating helps handleability.

5 THE COURT: No, I disagree with that. It says you  
6 don't need to use them.

7 MR. SABER: That's what their invention was  
8 allegedly about. Their invention was allegedly about -- it  
9 never worked. They never could make a product under it, but  
10 their invention was allegedly about, if you use enough of  
11 this lubricious material, you won't need coating.

12 THE COURT: You won't need coating.

13 MR. SABER: That's right, and that's exactly, your  
14 Honor, why we win this case, one hundred percent why we win  
15 this case.

16 THE COURT: Why wouldn't you win it on a record in  
17 front of a jury instead of -- in other words, if I don't have  
18 one of your people saying it doesn't make a difference and  
19 I --

20 MR. SABER: Well, you do, you know, and our experts  
21 put it in, but it's based on the record, your Honor. It's --

22 THE COURT: I understand. You keep pushing me  
23 back; you keep agreeing with me that I can't look at the  
24 specification. I need some admissible evidence, admissible  
25 evidence that the coating on your product makes a difference.

**Defendants Arthrex, Inc.'s and Pearsalls, Ltd.'s Exhibit List – Revised**

<b>TEX #</b>	<b>Description</b>	<b>Bates Range</b>	<b>Previously Used</b>	<b>Objections</b>	<b>I n / O u t</b>
<b>DTEX-1003</b>	CETR Raw Data on disc	ARM 25902			
<b>DTEX-1004</b>	Assignment: Ethicon, Inc., ASSIGNOR and DePuy Mitek, ASSIGNEE of U.S. Pat. No. 5,314,446	DMI 000338 – 000340	Defendants' Deposition Exhibit #5		
<b>DTEX-1005</b>	Management Review document titled: "Shoulder Anatomy" (color, undated)	DMI 039231 – 039244	Defendants' Deposition Exhibit #9	401-403 Orthocord Marketing & Research is irrelevant to infringement	
<b>DTEX-1006</b>	U.S. Patent No. 5,314,446, "Sterilized Heterogeneous Braids," A.W. Hunter et al., Inventors	N/A	Defendants' Deposition Exhibit #10		
<b>DTEX-1007</b>	Presentation: "Orthocord Management Design Review"	DMI 001001 – 001025	Defendants' Deposition Exhibit #11	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1008</b>	Presentation: "Orthocord" by Doug George	DMI 000977 – 000999	Defendants' Deposition Exhibit #12	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1009</b>	Presentation: "New Suture Concept Design Review"	DMI 001096 – 001101	Defendants' Deposition Exhibit #13	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1010</b>	Memo Regarding: Mitek development of alternate high-strength suture to Arthrex's Fiberwire	DMI 039558 – 039559	Defendants' Deposition Exhibit #14	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1011</b>	Presentation: "Orthocord Update"	DMI 039500 – 039517	Defendants' Deposition Exhibit #15	401-403 Orthocord Research Mitek Motion in Limine#5	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1012</b>	Printout of website for Shakespeare	DMI 040832 – 040833	Defendants' Deposition Exhibit #17		
<b>DTEX-1013</b>	R&D Monthly Status Report, October 2002, to Mr. D. Longstreet (cc Ethicon GMB), dated November 8, 2002	DMI 038169 – 038174	Defendants' Deposition Exhibit #18	401-403 Mitek R&D Summary Motion in Limine#5	
<b>DTEX-1014</b>	CPC Departmental Plan for Blue ORTHOCORD* (MITEK Suture), Version 2, dated September 9, 2004	DMI 038149 – 038153	Defendants' Deposition Exhibit #19	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1015</b>	Presentation: Blue Orthocord, Feasibility -> Development, Gary McAlister and Shelby Cook	DMI 006560 – 006574	Defendants' Deposition Exhibit #21	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1016</b>	OrthoCord Suture Development – Interim Report, by Ilya Koyfman	DMI 039630 – 039646	Defendants' Deposition Exhibit #22	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1017</b>	Presentation: “Synthetic Absorbable Sutures 2004 – Product Marketing” (color)	DMI 038684 – 038773	Defendants' Deposition Exhibit #23	401-403 Orthocord Research Mitek Mitek Motion in Limine#5	
<b>DTEX-1018</b>	Design Development and Validation Summary (DDVS) for Orthocord	DMI 040859 – 040870	Defendants' Deposition Exhibit #24	401-403 Ethicon Absorbable suture document, not relevant to infringement	
<b>DTEX-1019</b>	OrthoCord Suture Development Interim Report, by Ilya Koyfman and Hank Pokropinski	DMI 039421 – 039445	Defendants' Deposition Exhibit #25	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1020</b>	Protocol for a Orthocord Surgeon Evaluation	DMI 000414 – 000417	Defendants' Deposition Exhibit #26	401-403 Orthocord Research Mitek Motion in Limine#5	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1021</b>	Polymer & Suture Technologies – Quarterly Status Report: 3rd Quarter Research & Technology Devel., Wound Closure R&D, by Irene Nozad, Ph.D., Director	DMI 039695 – 039717	Defendants' Deposition Exhibit #27	401-403 Orthocord and other Irrelevant Product Research Mitek Motion in Limine#5	
<b>DTEX-1022</b>	Jon Grange email to DL-ETHUSMTK SalesReps; DL-ETHUSMTK SalesMgmt (cc DL-ETHUSMTK Marketing) re Orthocord Sales YTD-121004	DMI 040886	Defendants' Deposition Exhibit #28	401-403 Orthocord marketing	
<b>DTEX-1023</b>	Mark Mooney email to Howe, J., Koyfman, I., Seppa, K., (cc Scanlon, M., Grange, J., Gilson, R.) re Orthocord comparisons to Ethicon Sutures	DMI 001183 – 001184	Defendants' Deposition Exhibit #29		
<b>DTEX-1024</b>	Katie's (Seppa) Current Projects (list), dated June 29, 2004	DMI 039571 – 039573	Defendants' Deposition Exhibit #30	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1025</b>	Katie's (Seppa) Current Projects (list), dated July 26, 2004	DMI 039560 – 039561	Defendants' Deposition Exhibit #31	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1026</b>	Test Report for #2 Fiberwire MED2174	ARM 000699 – 000701	Defendants' Deposition Exhibit #32	401-403 Arthrex cannot provide foundation for the cosntruction of the sutures that it tested, rendring the tests irrelevant.	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1027</b>	Ethicon, Inc. Document Retention Policy	DMI 003507 – 003538	Defendants' Deposition Exhibit #34		
<b>DTEX-1028</b>	Lab Notebook issued to Mark Steckel, 2/6/1988, 14 pages	DMI 000374 – DMI 000387	Defendants' Deposition Exhibit #35		
<b>DTEX-1030</b>	Document entitled: "Suture Stiffness, A Comparison of Orthocord™ and Fiberwire™ suture," undated	DMI 001195 – 001203	Defendants' Deposition Exhibit #39	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1031</b>	Katherine R. Seppa memo to Mark Mooney (cc RDCF, I. Koyfman, S. Cook, R. Liebowitz)	DMI 40871 – 40873	Defendants' Deposition Exhibit #40	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1032</b>	Presentation slides: "Orthocord Management Design Review, Orthocord Feasibility Review, Orthocord on Anchors Concept Review"	DMI 039823 – 039841	Defendants' Deposition Exhibit #41	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1033</b>	Shawn Peniston email string to S. Cook regarding UHMWPE surface energy (tension)	DMI 040882	Defendants' Deposition Exhibit #46	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1034</b>	Video of Pearsalls' coating operation	N/A	Pearsalls Inspection, 01/11/2006		
<b>DTEX-1035</b>	Document titled: "The Ethicon Franchise and Ethicon Products Worldwide"	DMI 038175 – 038185	Defendants' Deposition Exhibit #50	401-403 Ethicon and Mitek marketing document irrelevant to infringement	
<b>DTEX-1036</b>	Presentation slides titled: "Market Dynamics," by Mitek	DMI 039387 – 039402	Defendants' Deposition Exhibit #52	401-403 Mitek marketing document	
<b>DTEX-1037</b>	Presentation slides titled: "Orthocord Update," by Ethicon, Inc.	DMI 038133 – 038138	Defendants' Deposition Exhibit #53	401-403 Orthocord Research Mitek Motion in Limine#5	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1038</b>	Presentation slides titled: "Orthocord Management Design Review," by Mitek & Ethicon	DMI 039647 – 039683	Defendants' Deposition Exhibit #54	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1039</b>	Presentation slides titled: "Orthocord" (undated, color)	DMI 094378 – 094407	Defendants' Deposition Exhibit #55	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1040</b>	Section IV. Key Issues Affecting Results, of Monthly Status Report, by Andy McGowan	DMI 022326 – 022329	Defendants' Deposition Exhibit #57	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1041</b>	Document entitled: "Shoulder Marketing Plan 2001," by Ann Rich, Product Director	DMI 094028 – 094037	Defendants' Deposition Exhibit #59	401-403 Mitek Marketing Document irrelevant to infringement	
<b>DTEX-1042</b>	Document entitled: "Shoulder Marketing Plan 2002," by Neil Weber, Tom Borg, Steve Muller	DMI 094077 – 094084	Defendants' Deposition Exhibit #60	401-403 Mitek Marketing Document irrelevant to infringement	
<b>DTEX-1043</b>	Document entitled: "Shoulder Marketing Plan 2003," by Tom Borg, Steve Muller	DMI 094085 – 094093	Defendants' Deposition Exhibit #61	401-403 Marketing document irrelevant to infringement	
<b>DTEX-1044</b>	Document entitled: "U.S. Shoulder Marketing Plan 2004," by Angela Lichty, Jon Grange, Doug George	DMI 094094 – 094104	Defendants' Deposition Exhibit #62	401-403 Marketing document irrelevant to infringement	
<b>DTEX-1045</b>	Document entitled: "Small Bones Marketing Plan Hand & Reconstructive Surgery 2001," by Joe Koziol, Product Manager	DMI 093980 – 093989	Defendants' Deposition Exhibit #63	401-403 Marketing document irrelevant to infringement	
<b>DTEX-1046</b>	Document entitled: "Small Joint Marketing Plan 2002," by Tom Borg, Product Director	DMI 094071 – 094076	Defendants' Deposition Exhibit #64	401-403 Marketing document irrelevant to infringement	



TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1047</b>	Document entitled: "Mensical Repair Marketing 2001," by Joan Sullivan, Product Director	DMI 093968 – 093979	Defendants' Deposition Exhibit #65	401-403 Marketing document irrelevant to infringement.	
<b>DTEX-1048</b>	Presentation slides titled: "DePuy Mitek Strategic Plan, DePuy Board Meeting"	DMI 039847 – 039880	Defendants' Deposition Exhibit #68	401-403 Marketing document irrelevant to infringement	
<b>DTEX-1049</b>	Lab Notebook issued to Mark Steckel [portion]	DMI 002605 – 002678	Defendants' Deposition Exhibit #75		
<b>DTEX-1050</b>	Lab Notebook No. 2209 issued to Mark Steckel [portion]	DMI 002269 – 002400	Defendants' Deposition Exhibit #81		
<b>DTEX-1051</b>	Lab Notebook No. 2210 issued to Mark Steckel	DMI 002401 – 002441	Defendants' Deposition Exhibit #82		
<b>DTEX-1052</b>	Table entitled: "Summary Worksheet – Novation"	DMI 022361	Defendants' Deposition Exhibit #87	401-403 Sales figures irrelevant to infringement	
<b>DTEX-1053</b>	Table entitled: "Ethicon – Domestic, Product Group Summary by Division, Jan 2006 Act vs. 1st Qtr 2006 Business Plan"	N/A	Defendants' Deposition Exhibit #106	401-403 Numerical listing of Ethicon sutures in inventory irrelevant to infringement	
<b>DTEX-1054</b>	Brochure: "Ethicon synthetic absorbable sutures. Tailor-made to suit the task," Including new PANACRYL suture [color]	DMI 094414 – 094425	Defendants' Deposition Exhibit #109	401-403 Ethicon absorbable suture marketing document irrelevant to infringement	
<b>DTEX-1055</b>	Brochure: "Panacryl"	DMI 094429 – 094434	Defendants' Deposition Exhibit #110	401-403, Ethicon absorbable suture marketing document, irrelevant to infringement	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1056</b>	Presentation slides: Ethicon Franchise Strategic Plan 2004 – 2009	DMI 039023 – 039089	Defendants' Deposition Exhibit #111	401-403 Ethicon Strategic Plan, Irrelevant to infringement	
<b>DTEX-1057</b>	Document entitled: "Ethicon Franchise 2003 – 2008 Strategic Plan"	DMI 015816 – 015821	Defendants' Deposition Exhibit #112	401-403 Ehticon strategic plan, Irrelevant to infringement	
<b>DTEX-1058</b>	Table [untitled, undated] showing suture market share figures	DMI 017435	Defendants' Deposition Exhibit #113	401-403, market share document, irrelevant to infringement.	
<b>DTEX-1059</b>	Table [untitled, undated] showing suture market share	DMI 006269	Defendants' Deposition Exhibit #114	401-403, market share document, irrelevant to infringement	
<b>DTEX-1060</b>	Table [untitled, undated] Market share report	DMI 006251	Defendants' Deposition Exhibit #115	401-403, market share document, irrelevant to infringement.	
<b>DTEX-1061</b>	Presentation Slides: "Customer Loyalty Conjoint Analysis"	DMI 015651 – 015658	Defendants' Deposition Exhibit #116	401-403, market share document, irrelevant to infringement.	
<b>DTEX-1062</b>	Document regarding 3rdQ, 2001 Investor Relations Update – Ethicon Worldwide Franchise [redacted]	DMI 040792 – 040798	Defendants' Deposition Exhibit #117	401-403, market share document, irrelevant	
<b>DTEX-1063</b>	Document regarding 3rdQ, 2002 Investor Relations Update – Ethicon Worldwide Franchise [redacted]	DMI 040799 – 040810	Defendants' Deposition Exhibit #118	401-403, market document, irrelevant to infringement	
<b>DTEX-1064</b>	Document regarding 4thQ, 2002 Investor Relations Update – Ethicon Worldwide Franchise [redacted]	DMI 040846 – 040858	Defendants' Deposition Exhibit #119	401-403 marketing document, irrelevant to infringement	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1065</b>	R. Skula letter to S. Soffen attaching Patent No. 5,314,446	ARM 24397 - 24406	Defendants' Deposition Exhibit #120		
<b>DTEX-1066</b>	S. Soffen letter to R. Skula, 12/15/2003	ARM 24339	Defendants' Deposition Exhibit #121	401-403, 408 letter related to presuit discussions between the parties, not relevant to infringement.	
<b>DTEX-1067</b>	R. Skula letter to S. Soffen, 1/16/2004	ARM 24332 - 24333	Defendants' Deposition Exhibit #123	401-403, 408 letter related to presuit discussions between the parties, not relevant to infringement.	
<b>DTEX-1068</b>	Lab Notebook issued to Mark Steckel [portion]	DMI 000374 - 000387	Defendants' Deposition Exhibit #124		
<b>DTEX-1069</b>	S. Soffen letter to R. Skula, 1/9/2004	ARM 24336 - 24337	Defendants' Deposition Exhibit #125	401-403, 408 letter relat presuit discussions between the parties, not relevant to infringement.	
<b>DTEX-1070</b>	S. Soffen letter to R. Skula, 2/20/2004	ARM 24287 - 24291	Defendants' Deposition Exhibit #126	401-403, 408 letter related to presuit discussions between the parties, not relevant to infringement.	
<b>DTEX-1071</b>	Lab Notebook No. 2175 issued to Mark Steckel [portion]	DMI 002605 - 002678	Defendants' Deposition Exhibit #127		
<b>DTEX-1072</b>	R. Skula letter to S. Soffen, 3/4/2003	ARM 24285	Defendants' Deposition Exhibit #128	401-403, 408 letter related to presuit discussions between the parties, not relevant to infringement.	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1073</b>	S. Soffen e-mail to R. Skula, 6/29/2004	ARM 24283	Defendants' Deposition Exhibit #129		
<b>DTEX-1074</b>	S. Soffen email to R. Skula, 7/13/2004	ARM 25591	Defendants' Deposition Exhibit #130		
<b>DTEX-1075</b>	R. Skula e-mail to S. Soffen, 7/26/2004	ARM 25592 – 25593	Defendants' Deposition Exhibit #131		
<b>DTEX-1076</b>	S. Soffen e-mail to R. Skula, 8/7/2004	ARM 25594 – 25596	Defendants' Deposition Exhibit #132		
<b>DTEX-1077</b>	R. Skula e-mail to S. Soffen, 8/19/2004	ARM 25598 – 25600	Defendants' Deposition Exhibit #133		
<b>DTEX-1078</b>	Jonathan Howe memorandum to Orthocord DHF 2002-38 (cc C. Spivak, J. Grange, M. Scanlon, R. Forstadt, A. Tse, K. Seppa) regarding Stiffness Analysis: Violet Orthocord™ vs. Blue Fiberwire	DMI 001147 – 001153	Defendants' Deposition Exhibit #135	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1079</b>	K. Seppa e-mail string to I. Koyfman, J. Grange, M. Mooney, S. Cook, D. McDonald, N. O'Hara, R. Wintersteller (cc P. Stebbins, R. Gilson, E. Ray) regarding: Subjective Handling Data on OrthoCord	DMI 094256 – 094257	Defendants' Deposition Exhibit #136	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1080</b>	Document entitled: "Ethicon Corporate Product Characterization, Product Performance Evaluation, Final Study Report" regarding Orthocord* Blue, by K. Seppa	DMI 015592 – 015594	Defendants' Deposition Exhibit #137	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1081</b>	Design History File entitled: "Orthocord violet #2 size suture, volume III"	DMI 061623 – 062007	Defendants' Deposition Exhibit #138	401-403 Orthocord Research Mitek Motion in Limine#5	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1082</b>	Table entitled: "DePuy Mitek Summary of CNIS Year to Date December 2005"	DMI 095328 – 095331	Defendants' Deposition Exhibit #145	401-403 financials irrelevant to infringement	
<b>DTEX-1083</b>	Presentation slides regarding Fiberwire sales, Market Strategy for Orthocord	DMI 094304 – 094338	Defendants' Deposition Exhibit #147	401-403 Orthocord marketing, irrelevant to infringement	
<b>DTEX-1084</b>	Tables regarding Forecast and MAPE Update spreadsheet	DMI 039886 – 039899	Defendants' Deposition Exhibit #150	401-403, marketing forecast, irrelevant to infringement	
<b>DTEX-1085</b>	Presentation slides: "Commercial Plan Extremities," by Rick Gilson and Jon Grange	DMI 095173 – 095311	Defendants' Deposition Exhibit #151	401-403, marketing irrelevant to infringement	
<b>DTEX-1086</b>	List of complaints DePuy Mitek received about its products	DMI 015166 – 015187	Defendants' Deposition Exhibit #162	401-403 802 customer complaints, irrelevant to infringement contains third-party hearsay regarding complaints	
<b>DTEX-1087</b>	Document entitled: "Process/Product Development Strategy, Project Violet OrthoCord," by I. Koyfman	DMI 082158 – 082164	Defendants' Deposition Exhibit #165	401-403, Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1088</b>	White Paper entitled: "Corporate Product Characterization, Product Performance Evaluation Group, OrthoCord (Mitek), Revised Final Test Report," by K. Seppa	DMI 081409 – 081413	Defendants' Deposition Exhibit #166	401-403 Orthocord Research Mitek Motion in Limine#5	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1089</b>	White Paper entitled: "Corporate Product Characterization, Product Performance Evaluation Group, OrthoCord (Mitek), Final Test Report," by L. Vailhe, Requestor – Ilya Koyfman	DMI 081405 – 081408	Defendants' Deposition Exhibit #167	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1090</b>	Report entitled: "OrthoCord Suture Development, Interim Report," by I. Koyfman, H. Pokropinski	DMI 039446 – 039470	Defendants' Deposition Exhibit #168	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1091</b>	M. Mooney e-mail string to Renay Lawson regarding attached Completion Report for the Development of Violet Orthocord	DMI 094157 – 094169	Defendants' Deposition Exhibit #169	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1092</b>	Table entitled: "Process Failure Modes and Effect Analysis (pFMEA)," Orthocord Cornelia Process, by Andrew Brackett, 11/18/2005	DMI 079770 – 079780	Defendants' Deposition Exhibit #170	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1093</b>	I. Koyfman memo to S. Cook, M. Mooney (cc Dr. I. Nozad, E. Miller, K. Seppa, RDCF) regarding: Justification for the Bunching Requirements of Orthocord Braided Suture, 3/17/2004	DMI 081183 – 081187	Defendants' Deposition Exhibit #171	401-403 Orthocord Research Mitek Motion in Limine#5	
<b>DTEX-1094</b>	Table of Arthrex FiberWire Sales	DMI 001137	Defendants' Deposition Exhibit #180	401-403 unreadable document, refers to market information	
<b>DTEX-1095</b>	R. Skula letter to S. Soffen, 12/1/2003	ARM 24397	Defendants' Deposition Exhibit #181		

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1096</b>	U.S. Patent No. 5,019,093, "Braided Suture," Donald S. Kaplan et al., Inventors	N/A	Defendants' Deposition Exhibit #190	401-403 Patent irrelevant to infringement, not relied upon by Arthrex's expert witnesses, owned by a third-party, no witness to discuss with respect to infringement, raised at an expert deposition with reference to validity issues	
<b>DTEX-1097</b>	U.S. Patent No. 5,222,978, "Packaged Synthetic Absorbable Surgical Elements," Donald S. Kaplan et al., Inventors	N/A	Defendants' Deposition Exhibit #191	401-403 Patent irrelevant to infringement; not relied upon by expert witnesses regarding infringement, owned by a third-party, no witness to discuss with respect to infringement, raised at an expert deposition with respect to validity issues	
<b>DTEX-1098</b>	[Physical]: Samples of FiberWire (blue) and Tiger Wire (white/black), retained by Mr. Saber	N/A	Defendants' Deposition Exhibit #192		
<b>DTEX-1099</b>	U.S. Patent No. 5,312,437, "Absorbable Coatings Composition and Suture Coated Therewith," Matthew E. Hermes et al., Inventors	N/A	Defendants' Deposition Exhibit #196	401-403 No expert witness considered this patent, and therefore Arthrex should not be permitted to introduce it.	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1100</b>	U.S. Patent No. 5,147,383, "Suture Coated with a Polyvinyl Ester," by Rao S. Bezwada et al., Inventors	N/A	Defendants' Deposition Exhibit #202	401-403 Irrelevant to infringement issues because it does not discuss Arthrex's FiberWire product.	
<b>DTEX-1101</b>	U.S. Patent No. 5,089,013, "Suture Coated with a Polyvinyl Ester," Rao S. Bezwada et al., Inventors	N/A	Defendants' Deposition Exhibit #203	401-403 Irrelevant to infringement issues because it does not discuss Arthrex's FiberWire product.	
<b>DTEX-1102</b>	U.S. Patent No. 4,532,929, "Dry Coating of Surgical Filaments," Frank V. Mattei et al., Inventors	N/A	Defendants' Deposition Exhibit #204	401-403 Irrelevant to infringement issues because it does not discuss Arthrex's FiberWire product.	
<b>DTEX-1103</b>	Document entitled: "Completion Report for Protocol #ST-98053, Protocol for the Development of NVC Coating on Panacryl™ Suture Material," by Jerry Fischer & Howard Scalzo	DMI 060231 – 060234	Defendants' Deposition Exhibit #205	401-403 Ethicon document discussing an absorbable suture, irrelevant to infringement issues because it does not discuss Arthrex's FiberWire	
<b>DTEX-1104</b>	Presentation slides: Orthocord Promotional Material	DMI 094378 and 94394	Defendants' Deposition Exhibit #206	401-403 Incomplete document, Orthocord Research & Marketing Motion in Limine#5	



TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1105</b>	Document entitled: "Wound Closure Manual," Ethicon, Ch. 2, P.11, front and back covers	N/A	Defendants' Deposition Exhibit #207	401-403 Ethicon document discussing an absorbable suture, irrelevant to infringement issues because it does not discuss Arthrex's FiberWire	
<b>DTEX-1106</b>	Document entitled: "FiberWire – Important Product Information," in English, German, French, Italian & Spanish, 2 pgs.	N/A	Defendants' Deposition Exhibit #208		
<b>DTEX-1107</b>	Dr. David Brookstein's invoices to Mr. Erich Falke for professional services	DB DB000163 - 000167	Defendants' Deposition Exhibit #209	401-403 Expert invoice, not admissible	
<b>DTEX-1108</b>	Document regarding Gordon Laboratory Seminar Series, Presenters/topics for April 28th through July 6th, attaching abstracts	DB 000029 - 000036	Defendants' Deposition Exhibit #210		
<b>DTEX-1109</b>	Study: George T. Rodeheaver et al., "Knotting and Handling Characteristics of Coated Synthetic Absorbable Sutures," Academic Press (1983) 525-530	N/A	Defendants' Deposition Exhibit #211	802/901 Third-party document, no foundation regarding publication, and hearsay statements by third-party.	
<b>DTEX-1110</b>	Paper: "Standard Test Method for Tensile Properties of Plastics," ASTM International, Designation: D 638 – 03	DB 000001 - 000015	Defendants' Deposition Exhibit #213		
<b>DTEX-1111</b>	Photographs, graphs of test results and discussion of Pearsalls testing procedures	DB 000168 - 000187	Defendants' Deposition Exhibit #214		
<b>DTEX-1112</b>	Curriculum Vitae of Debi Prasad Mukherjee, Ph.D.	N/A	Mukherjee Expert Report (3/3/06) Exhibit #2	401-403 802 Expert c.v., not relevant.	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1114</b>	Investigation, Project No. CBE, regarding PET / PTFE Composite, dated 2/2/1989	DMI 002638	Mukherjee Expert Report (3/3/06) Exhibit #9		
<b>DTEX-1115</b>	Lab Notebook No. 2175 issued to Mark Steckel, 2/29/1988, [portion]	DMI 002605, DMI 002637, DMI 002674	Mukherjee Responsive Expert Report (3/24/06) Exhibit #7		
<b>DTEX-1116</b>	U.S. Patent No. 4,994,074, "Copolymers of Epsilon-Caprolactone for Suture Coatings," Raos Bezwada, et al., Inventors	N/A	Mukherjee Responsive Expert Report (3/24/06) Exhibit #12	401-403 Irrelevant to infringement issues because it does not discuss Arthrex's FiberWire product.	
<b>DTEX-1117</b>	Article entitled: "Knotting and Handling Characteristics of Coated Synthetic Absorbable Sutures," by George T. Rodeheaver, PhD., et al, 1/6/1983, pp. 525 - 528	N/A	Mukherjee Responsive Expert Report (3/24/06) Exhibit #13	401-403 802 802/901 Third-party document, no foundation regarding publication, and hearsay statements by third-party; Duplicative of DTEX1109	
<b>DTEX-1118</b>	Completion Report for Protocol # ST – 98053, "Protocol for the Development of NVC Coating on Panacryl suture material," 1/25/1999	DMI 060231 - 060234	Mukherjee Responsive Expert Report (3/24/06) Exhibit #14	401-403 Ethicon document discussing an absorbable suture, irrelevant to infringement issues because it does not discuss Arthrex's FiberWire; Duplicative of DTEX1103	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1119</b>	Presentation slides: Product Information Sheet, Orthocord	DMI 094378 and 094394	Mukherjee Responsive Expert Report (3/24/06) Exhibit #15	401-403 incomplete document duplicative of DTEX 1104.	
<b>DTEX-1120</b>	Interim Report, Orthocord Suture Development, 9/2/2003	DMI039421; DMI039438	Mukherjee Responsive Expert Report (3/24/06) Exhibit #17	401-403 Othorcord development document, irrelevant to infringement, Motion in Limine#5	
<b>DTEX-1121</b>	Arthrex Test Report Summary and Sign-Off Sheet, 02/16/2004	ARM 000699 - 000701	Mukherjee Responsive Expert Report (3/24/06) Exhibit #19	401-403 Arthrex has on foundation to prove the construction of the samples that it tested.	
<b>DTEX-1122</b>	Report, Comparative Suture Testing, Center For Tribology, 3/23/2006	N/A	Mukherjee Responsive Expert Report (3/24/06) Exhibit #20	802 Arthrex expert report.	
<b>DTEX-1123</b>	Article entitled: "Tensile Strength and Knot Security of Surgical Suture Materials," John B. Herrmann, M.D., 4/1971	N/A	Mukherjee Responsive Expert Report (3/24/06) Exhibit #22	802/901 Third-party herasay document, no foundation for its source or publication.	
<b>DTEX-1124</b>	U.S. Patent No. 4,983,180, "Coated Sutures Exhibiting Improved Knot Security," Tatsuya Kawai et al., Inventors	N/A	Mukherjee Responsive Expert Report (3/24/06) Exhibit #23	401-403 Irrelevant to infringement, does not discuss FiberWire product.	
<b>DTEX-1125</b>	U.S. Patent No. 4,649,920, "Coated Suture," Joseph D. Rhum, Inventor	N/A	Mukherjee Responsive Expert Report (3/24/06) Exhibit #24	401-403 Irrelevant to infringement, does not discuss FiberWire product.	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1126</b>	Table entitled: "Pearsalls Sutures Knot Pull Results"	N/A	Mukherjee Responsive Expert Report (3/24/06) Exhibit #25		
<b>DTEX-1127</b>	Modern Plastics Encyclopedia Values, "Properties of Polyethylene Terephthalate /PET," and "Nylon 66 Molding Compound," Roger D. Corneliussen, 2002, 4 pp.	N/A	Mukherjee Responsive Expert Report (3/24/06) Exhibit #26		
<b>DTEX-1128</b>	Arthrex Product Information, FiberStick and TigerStick	N/A	Mukherjee Responsive Expert Report (3/24/06) Exhibit #27		
<b>DTEX-1129</b>	Product Specification, Pearsall Sutures, Kryston Silkworm (91) various knot strengths, 1/1991	PR 08400 - 08403	Mukherjee Responsive Expert Report (3/24/06) Exhibit #29	401-403 Pearsalls fishing line development document.	
<b>DTEX-1130</b>	Arthrex Brochure: "Revolutionizing Orthopaedic Surgery, FiberWire: Braided Polyblend Suture," 2004	ARM 10564 – 10573	Mukherjee Responsive Expert Report (3/24/06) Exhibit #30		
<b>DTEX-1131</b>	International Application Published Under PCT, "Composite Surgical Sutures," A61L 17/00, WO 86/00020, 1/3/1986	DMI 000150 - 000179	Mukherjee Rebuttal Expert Report (4/13/06) Exhibit #9		
<b>DTEX-1132</b>	Lab Notebook issued to Mark Steckel [portion]	DMI 002605 and 002618	Mukherjee Rebuttal Expert Report (4/13/06) Exhibit #11		
<b>DTEX-1133</b>	U.S. Patent No. 6,716,234 B2, "High Strength Suture Material," R. Donald Grafton, et al., Inventors	N/A	Mukherjee Rebuttal Expert Report (4/13/06) Exhibit #12	403 Arthrex's Patent related to FiberWire	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1134</b>	Lab Notebook No. 2175 issued to Mark Steckel, portion	DMI 002605 and 002368	Mukherjee Rebuttal Expert Report (4/13/06) Exhibit #17		
<b>DTEX-1135</b>	Arthrex Brochure, "Revolutionizing Orthopaedic Surgery, FiberWire: Braided Composite Suture," 2005	N/A	Arthrex Brief on Claim Construction, 8/11/2006, Exhibit #2		
<b>DTEX-1137</b>	Arthrex FiberWire brochure, 2005	N/A	Defendants' Motion for Summary Judgment (8/11/06), Exhibit 2	Duplicative of DTEX 1137.	
<b>DTEX-1138</b>	Memo, [Untitled, Redacted], 2 pages	DMI 039558 - 039559	Defendants' Motion for Summary Judgment (8/11/06), Exhibit 5	401-403 Orthocord Research document, irrelevant to infringement, Motion in Limine#5.	
<b>DTEX-1139</b>	Presentation slides: ORTHOCORD Update, 15 July 2004	DMI 038133, DMI 038137	Defendants' Motion for Summary Judgment (8/11/06), Exhibit 6	401-403 Orthocord marketing document, incomplete document	
<b>DTEX-1140</b>	Arthrex About Us webpage, 8/10/06, 1 page	N/A	Defendants' Motion for Summary Judgment (8/11/06), Exhibit 16		
<b>DTEX-1141</b>	Johnson & Johnson Gateway: Depuy Mitek, Inc., A Johnson & Johnson company, web page, 8/10/06, 2 pages	N/A	Defendants' Motion for Summary Judgment (8/11/06), Exhibit 17		
<b>DTEX-1142</b>	About ETHICON webpage, 1 page, 8/10/06	N/A	Defendants' Motion for Summary Judgment (8/11/06), Exhibit 18		

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1143</b>	Lab Notebook issued to Mark Steckel [portion]	DMI 002605, DMI 002635 – 002638, DMI 002666	Defendants' Motion for Summary Judgment (8/11/06), Exhibit 21		
<b>DTEX-1144</b>	Invoice list, "Based upon QAD information as of 6/10/05"	ARM 24165-A	Defendants' Motion for Summary Judgment (8/11/06), Exhibit 27		
<b>DTEX-1145</b>	DePuy Mitek's Privileged Document List, 1/25/2006, 5 pages	N/A	Defendants' Reply to Response to Motion for Summary Judgment (9/15/06), Exhibit#7	401-403 Privilege Log, irrelevant to infringement.	
<b>DTEX-1146</b>	U.S. Patent No. 4,074,713, "Poly(N-acetyl-D Glucosamine) Products," Richard Carl Capozza, Inventor	N/A	Defendants' Reply to Response to Motion for Summary Judgment (9/15/06), Exhibit#8	401-403 not produced during discovery, no expert to discuss Motion in Limine#3.	
<b>DTEX-1147</b>	U.S. Patent No. 4,074,366, "Poly(N-acetyl-D Glucosamine) Products," Richard Carl Capozza, Inventor	N/A	Defendants' Reply to Response to Motion for Summary Judgment (9/15/06), Exhibit#9	401-403 not produced during discovery, no expert to discuss, Motion in Limine#3.	
<b>DTEX-1148</b>	Physical exhibit - Mixed bag of coated and uncoated Fiberwire suture tested by Dr. Gitis in March 2006	CETR 0075	N/A		

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1149</b>	Article, Knotting and Handling Characteristics of Coated Synthetic Absorbable Sutures, George T. Rodeheaver, Ph.D., et al, 1/6/1983	CETR 0110 – 0114	N/A	802/901 Third-party document, no foundation regarding publication, and hearsay statements by third-party. Duplicative of DTEX1109.	
<b>DTEX-1150</b>	Article, Knot Security in Simple Sliding Knots and Its Relationship to Rotator Cuff Repair: How Secure Must the Knot Be? Stephen S. Burkhart, et al, 3/2000	CETR 0115 – 0120	N/A	802/901 Third-party document, no foundation regarding publication, and hearsay statements by third-party.	
<b>DTEX-1151</b>	Article, Mechanical performance of knots using braided and monofilament absorbable sutures, Daniel C. Schubert, MD, et al, 12/2002	CETR 0121 - 0125	N/A	802/901 Third-party document, no foundation regarding publication, and hearsay statements by third-party.	
<b>DTEX-1152</b>	Article, Monocryl suture, a new ultra-pliable absorbable monofilament suture, 1/26/1995	CETR 0126 - 0133	N/A	802/901 Third-party document, no foundation regarding publication, and hearsay statements by third-party.	
<b>DTEX-1153</b>	Report, Tribometrological Studies in Bioengineering, 6/2004	CETR 0134 - 0144	N/A		
<b>DTEX-1154</b>	Report, Precision Experimental Measurements of Viscoelastic Properties of Industrial Polymers, 10/2003	CETR 0145 - 0146	N/A		

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1155</b>	Report, Evaluation of Elastic Properties of Elastomer Micro-Springs with CETR Micro-Tribometer, 8/18/1998	CETR 0147 - 0148	N/A	401-403/802 Irrelevant to infringement. No foundation regarding publication, third-party document.	
<b>DTEX-1156</b>	Report, Micro and Nano Hardness Measurements on UMT Testers	CETR 0149 - 0150	N/A	401-403/802 Irrelevant to infringement. No foundation regarding publication, third-party document.	
<b>DTEX-1157</b>	Report, Comprehensive Materials Testing for Mechanical and Tribological Properties	CETR 0151 - 0154	N/A	802 Irrelevant to infringement. No foundation regarding publication, third-party document.	
<b>DTEX-1158</b>	User's Manual, CETR UMT-2 – Multi-Specimen Test System, Version 1.01, 9/29/2004	CETR 0155 - 0243	N/A 401-403/802 Irrelevant to infringement. No foundation regarding publication, third-party document.	401-403/802 Irrelevant to infringement. No foundation regarding publication, third-party document.	
<b>DTEX-1159</b>	Physical sample - uncoated FiberWire suture tested by Dr. Gitis in March 2006	ARM 25904	N/A		
<b>DTEX-1160</b>	Marketing Product Initiation (MPI) form No. 670 by Rob Sluss, 5/21/2003	ARM 3584	DePuy Mitek's Deposition Exhibit #53		
<b>DTEX-1161</b>	MPI form No. 435 by D. Grafton, 9/28//2000	ARM 000933	DePuy Mitek's Deposition Exhibit #54		



TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1162</b>	Subsequent Design Review Meeting minutes re MPI 670, 12/11/2003	ARM 3580	DePuy Mitek's Deposition Exhibit #55		
<b>DTEX-1163</b>	Product Launch Form for MPI 435, Part No. AR-7200, 10/19/2000	ARM 3651	DePuy Mitek's Deposition Exhibit #56		
<b>DTEX-1164</b>	Arthrex white paper – a collection of scientific data from testing FiberWire prior to its product launch, 4/2001	ARM 10614 – 10619	DePuy Mitek's Deposition Exhibit #60	401-403 802 Statements by third-party. No witness to discuss the relevance of the document.	
<b>DTEX-1165</b>	Arthrex FiberWire brochure (undated)	ARM 10564 – 10573	DePuy Mitek's Deposition Exhibit #62	Unreadable	
<b>DTEX-1166</b>	Original and initial submission to the FDA	ARM 001888 – 002078		401-403 802 901 FDA submission which includes third-party hearsay documents that lack foundation, and information irrelevant to infringement	
<b>DTEX-1167</b>	Arthrex Product Catalog, 2005	ARM 18334 – 18614	DePuy Mitek's Deposition Exhibit #101		
<b>DTEX-1168</b>	Technical File, (Design History File) Arthrex Fiber Wire™ Invasive, Implantable Device, Class IIb (Rule 8), Volume 1 of 2, 7/17/2001	ARM 8454 – 8846	DePuy Mitek's Deposition Exhibit #102	401-403 802 901 FDA submission which includes third-party hearsay documents that lack foundation, and information irrelevant to infringement	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1170</b>	Production Process, R.K. Manufacturing Corp.	RK 00688	DePuy Mitek's Deposition Exhibit #104		
<b>DTEX-1171</b>	Letter Agreement between Arthrex and R.K. Manufacturing Corp. signed as agreed to and accepted on 12/12/2002, 10/14/2002	RK 00001	DePuy Mitek's Deposition Exhibit #105		
<b>DTEX-1172</b>	Design History File for FiberWire (Volume Two)	ARM 000702 - 000866	DePuy Mitek's Deposition Exhibit #116	401-403 802 901 Design file hisotry that contains third-party hearsay documents that lack foundation, and information irrelevant to infringement	
<b>DTEX-1173</b>	Market Product Initiation form (Rev. 4), signed RS on 9/25/2001, 6/6/2003	ARM 7286 – 7287	DePuy Mitek's Deposition Exhibit #132		
<b>DTEX-1174</b>	Design History File: FiberWire (Volume One), 3/4/2001	ARM 000913 - 001139	DePuy Mitek's Deposition Exhibit #138	401-403 802 901 FDA submission which includes third-party hearsay documents that lack foundation, and information irrelevant to infringement	
<b>DTEX-1175</b>	Engineering Meeting Notes – FiberWire design review; Attendees: R. Schmieding, D. Grafton, D. Donnemeyer, C. Morgan, S. Soffen, G. Guederian, B. Marceau, B. Hackett, P. Dreyfuss, T. Hoover, S. Price, B. Benavitz, P. O'Quinn, V. Brown, 2/15-16/2001	ARM 8607	DePuy Mitek's Deposition Exhibit #218		

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1176</b>	Pearsalls Sutures – Fiberwire Process Flowchart, 6/29/2001	ARM 002554	DePuy Mitek's Deposition Exhibit #281		
<b>DTEX-1177</b>	[Physical] Pearsalls Ltd. US2 FiberWire M/C state scoured sample	PR 008388	DePuy Mitek's Deposition Exhibit #282		
<b>DTEX-1178</b>	[Physical] Pearsalls Ltd. US2 M/C state before being scoured	PR 008387	DePuy Mitek's Deposition Exhibit #283		
<b>DTEX-1179</b>	[Physical] Pearsalls Ltd. US2 FiberWire M/C state scoured/dyed sample	PR 008389	DePuy Mitek's Deposition Exhibit #284		
<b>DTEX-1180</b>	[Physical] Pearsalls Ltd. US2 FiberWire M/C state dye/coated sample	PR 008390	DePuy Mitek's Deposition Exhibit #285		
<b>DTEX-1181</b>	[Physical] Braided polyester suture 2B-F/W, 5 m. Length P505T2 Suture Coated	PR 008386	DePuy Mitek's Deposition Exhibit #286		
<b>DTEX-1182</b>	Pearsalls Certificate of Conformity issued by K. Young to Arthrex, 3/26/2004	ARM 22429	DePuy Mitek's Deposition Exhibit #314		
<b>DTEX-1183</b>	Fiberwire Acceptance Criteria [table] [undated]	ARM 22392	DePuy Mitek's Deposition Exhibit #315		
<b>DTEX-1184</b>	Arthrex Test Report Summary and Sign-Off Sheet for #2 Fiberwire MED2174 Coated and Uncoated USIPG Dyed, 3 pgs, 2/16/2004	N/A	DePuy Mitek's Deposition Exhibit #343	401-403 Arthrex has not witness to provide foundation regarding the construction of the samples.	
<b>DTEX-1185</b>	[Physical] – Sutures retained by Mr. Falke	N/A	DePuy Mitek's Deposition Exhibit #235		
<b>DTEX-1186</b>	[Physical] – Sutures retained by Mr. Falke	N/A	DePuy Mitek's Deposition Exhibit #236		

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1187</b>	[Physical] – Sutures retained by Mr. Falke	N/A	DePuy Mitek's Deposition Exhibit #237		
<b>DTEX-1188</b>	[Physical] – Suture in plastic bag, 6/14/2006	N/A	DePuy Mitek's Deposition Exhibit #364		
<b>DTEX-1189</b>	[Physical] – Suture in plastic bag, 6/14/2006	N/A	DePuy Mitek's Deposition Exhibit #365		
<b>DTEX-1190</b>	[Physical] – Suture Sample, 6/21/2006	CETR 75	DePuy Mitek's Deposition Exhibit #388		
<b>DTEX-1191</b>	[Physical] – Suture Samples, 6/21/2006	ARM 25930	DePuy Mitek's Deposition Exhibit #389		
<b>DTEX-1192</b>	[Physical] – Suture Sample, coated, 6/21/2006	ARM 25904	DePuy Mitek's Deposition Exhibit #390		
<b>DTEX-1193</b>	FedEx tracking sheet showing shipment from Yien Saechao to Scott Giraud, 4/10/2006	CETR 54 - 57	DePuy Mitek's Deposition Exhibit #391		
<b>DTEX-1194</b>	Pearsalls Certificate of Conformity for Blue Fiber Wire, U.S. Size 2, issued by S. Littlejohns, 2/17/2006	PR 08457	DePuy Mitek's Deposition Exhibit #399		
<b>DTEX-1195</b>	Pearsalls Certificate of Conformity for Blue Fiber Wire Uncoated, U.S. Size 2, 2/17/2006	PR 08456	DePuy Mitek's Deposition Exhibit #400		
<b>DTEX-1196</b>	CETR, UMT-2 – Multi-Specimen Test System, User's Manual, Version 1.01, 9/29/2004	CETR 0155 - 0243	DePuy Mitek's Deposition Exhibit #416	401-403 802 401-403/802 Irrelevant to infringement. No foundation regarding publication, third-party document. Duplicative of DTEX1158.	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1197</b>	Application Note on measurements of elastic properties of Elastomer micro-springs	CETR 0147 - 0148	DePuy Mitek's Deposition Exhibit #417	401-403 802 Irrelevant to infringement. No foundation regarding publication, third-party document. Duplicative of DTEX1155.	
<b>DTEX-1198</b>	Application Note on Micro and Nano Hardness Measurements on UMT Testers	CETR 0149 - 0150	DePuy Mitek's Deposition Exhibit #418	401-403 802 901 401-403 802 Irrelevant to infringement. No foundation regarding publication, third-party document. Duplicative of DTEX1198.	
<b>DTEX-1199</b>	Paper: "Tribometrological Studies in Bioengineering," by Dr. N. Gitis, Session 61, Proc. of the 2004 SEM X Int'l. Cong. And Expos. in Experimental and Applied Mechanics, Jun 7-10, Costa Mesa, CA	CETR 0134 - 0144	DePuy Mitek's Deposition Exhibit #419	Duplicative of DTEX1199.	
<b>DTEX-1200</b>	D.L. Lawson letters to S. Tamburo attaching two Certificates of Conformity for Pearsalls Braided Fiberwire, 2/17/2006	PR 08455 - 08460	DePuy Mitek's Deposition Exhibit #435		
<b>DTEX-1201</b>	Pearsalls standard production processing documents, Jan-Feb 2006	PR 08461 - 08473	DePuy Mitek's Deposition Exhibit #436		
<b>DTEX-1202</b>	Pearsalls Test Methods forms for several procedures, 1997-2003	PR 08433 - 08454	DePuy Mitek's Deposition Exhibit #437		

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1203</b>	[Physical] – 5m length of suture – FibreWire suture from batch 28893 that is part of a 10m retention sample that is saved for each production batch (Retained by Mr. Bonella)	N/A	DePuy Mitek's Deposition Exhibit #438		
<b>DTEX-1204</b>	Correction of ARM 24165, Financial documents: Forecasts and fiscal budget info. Forecast Maintenance Documents, 8/24/2005	ARM 24165A	N/A		
<b>DTEX-1205</b>	RK Manufacturing Processes Flowchart	RK 01698	N/A		
<b>DTEX-1206</b>	Pearsalls Ltd. Documents (development trial & summary docs), 11/25/96, 12/10/96	PR 08313 - 08315	N/A	401-403 Pearsalls document related to developemtal of product not at issue in the case.	
<b>DTEX-1207</b>	Documents re indemnification agreement between Arthrex and Pearsalls	PR 8315A - 8322	N/A	401-403 Indemnification agreement, not relevant.	
<b>DTEX-1208</b>	Documents produced by Pearsall during the UK Inspection, 1/19/2006	PR 08325 - 08385	N/A		
<b>DTEX-1209</b>	Pearsalls Ltd. Documents, 1/25/2006	PR 08392 - 08432	N/A	401-403 802 901 collection of unrelated documents, some third-party documents that are hearsay and lack foundation, documents related to fishing line products that are not at issue in the case.	
<b>DTEX-1210</b>	Indemnification correspondence	PR 8315A – 8315C	N/A		
<b>DTEX-1211</b>	Pearsalls Ltd.'s Test Reports	PR 8433 - 8454	N/A		

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1212</b>	Documents responsive to Sal's e-mail dated 4/13/2006 including Pearsalls and CETR documents., 4/15/2006	PR 08455 – 08460; CETR 0001 - 0057	N/A	401-403 Collection of unrelated documents, some documents are admissible, but the collection is not, and includes third-party documents that are hearsay and lack foundation.	
<b>DTEX-1214</b>	Arthrex Product Catalog (2005)	ARM 18334 – 18614	N/A		
<b>DTEX-1215</b>	Brochure: "FiberWire: Orthopedic Composite Suture"	ARM 10574 - 10613	N/A	Collection of unrelated documents	
<b>DTEX-1216</b>	Brochure: "FiberWire: Braided Polyblend Suture"	ARM 10564 - 10573	N/A		
<b>DTEX-1217</b>	Report: "FiberWire, Collective Summary of Strength and Biocompatibility Testing Data Comparisons of Polyester and Polyblend Sutures"	ARM 10614 - 10619	N/A	401-403 802 Document contains third-party hearsay, no witness to explain its relevance, not relevant to infringement.	
<b>DTEX-1218</b>	Arthrex Product Catalog 2000-2001	ARM 9473 - 9665	N/A		
<b>DTEX-1219</b>	Arthrex Product Catalog 2002	ARM 9666 - 9881	N/A		
<b>DTEX-1220</b>	Arthrex Product Catalog 2003/2004	ARM 9882 - 10134	N/A		
<b>DTEX-1221</b>	Arthrex Product Catalog (Video Edition)	ARM 10135 - 10167	N/A		
<b>DTEX-1222</b>	Arthrex Product Catalog	ARM 10168 - 10228	N/A		
<b>DTEX-1223</b>	Brochure: "Orthocord Suture"	ARM 003048 - 003049	N/A		
<b>DTEX-1224</b>	Brochure: FiberWire: Braided Polyblend Suture	ARM 000298 – 000307	N/A	Duplicate.	
<b>DTEX-1225</b>	E-Mail from S. Soffen to R. Skula, 6/29/2004	ARM 000688	N/A	Duplicate of DTEX1073.	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1226</b>	E-Mail from S. Soffen to R. Skula, 2/13/2004	ARM 000689	N/A	401-403, 408 Document related to pre-suit discussions between the parties, not infringement.	
<b>DTEX-1227</b>	E-Mail from S. Soffen to R. Skula, 2/4/2004	ARM 000690	N/A	401-403, 408 Document related to presuit discussions between the parties, not infringement.	
<b>DTEX-1228</b>	Letter from R. Skula to S. Soffen, 3/4/2003	ARM 000692	N/A	401-403 Rule 408 Document related to pre-suit discussions between the parties, not relevant to infringement.	
<b>DTEX-1229</b>	Letter from S. Soffen to R. Skula, 2/20/2004	ARM 000693 – 00094	N/A	401-403 408 Document related to presuit discussion between the parties, not relevant to infringement.	
<b>DTEX-1230</b>	Letter from S. Soffen to R. Skula, 12/15/2003	ARM 000695	N/A	401-403, 408 Document related to presuit discussion between the parties, not relevant to infringement.	
<b>DTEX-1231</b>	Letter from R. Skula to S. Soffen, 1/16/2004	ARM 000696 – 000697	N/A	401-403, 408 Document related to presuit discussion between the parties, not relevant to infringement.	



TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1232</b>	Letter from R. Skula to S. Soffen, 12/1/2003	ARM 000698	N/A		
<b>DTEX-1233</b>	Design History File, FiberWire (Volume Two)	ARM 000702 – 000906	N/A	401-403 802, 901 Collection of documents including third-party hearsay that lacks foundation, and information irrelevant to infringement.	
<b>DTEX-1234</b>	Design History File, FiberWire (Volume One)	ARM 000913 – 000998	N/A	401-403 802, 901 Collection of documents including third-party hearsay that lacks foundation, and information irrelevant to infringement.	
<b>DTEX-1235</b>	Document: Suture Spreadsheet	ARM 24016 – 24164	N/A	401-403	
<b>DTEX-1236</b>	Photo of FiberWire Spool – US 2 M/C State – uncoated suture	ARM 25590	N/A	401-403 Produced after fact discovery closed, depriving Mitek of the opportunity to take fact discovery from witnesses regarding their construction.	
<b>DTEX-1237</b>	Photo of FiberWire Spool – US 2 Coated Med 2174 Batch 03/26/16122 - coated suture	ARM 25451	N/A	401-403 Produced after fact discovery closed, depriving Mitek of the opportunity to take fact discovery from witnesses regarding their construction.	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1238</b>	Photo of FiberWire Spool – “from Tara – uncoated from spool identified”	ARM 25452	N/A	401-403 Produced after fact discovery closed, depriving Mitek of the opportunity to take fact discovery from witnesses regarding their construction.	
<b>DTEX-1239</b>	CD – 2005 Product Catalog	ARM 25813	N/A		
<b>DTEX-1240</b>	CD – FiberWire Sales	ARM 24167	N/A	401-403 Financial information, not relevant.	
<b>DTEX-1241</b>	Curriculum Vitae of Norm V. Gitis	N/A	Responsive Expert Report of Dr. Debi Prasad Mukherjee Exhibit #20, Appendix 2a.		
<b>DTEX-1242</b>	Curriculum Vitae of John F. Witherspoon	N/A	Arthrex’s Expert Report of John F. Witherspoon (3/03/2006), Exhibit A	401-403 802 CV of objectionable witness, Mitek Motion in Limine#4.	
<b>DTEX-1243</b>	Curriculum Vitae of Robert T. Burks, M.D.		Arthrex’s Expert Report of Robert T. Burk, M.D. (3/24/2006), Exhibit #1		
<b>DTEX-1245</b>	Sterilization Documents: “Certificate of Processing Ethylene Oxide Treatment at Sterile Systems,” 3/14/2006	CETR 0001 – 0037	N/A	802 Third-party hearsay.	
<b>DTEX-1246</b>	FedEx Receipt: 4/10/2006	CETR 54	N/A		
<b>DTEX-1247</b>	FedEx Receipt: 4/10/2006	CETR 55	N/A		

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1248</b>	FedEx Receipt: 4/10/2006	CETR 56	N/A		
<b>DTEX-1249</b>	FedEx Receipt: 4/10/2006	CETR 57	N/A		
<b>DTEX-1250</b>	Article: "Precision Experimental Measurements of Viscoelastic Properties of Industrial Polymers," 10/7/2003	CETR 0058 - 0059	N/A	Duplicative.	
<b>DTEX-1251</b>	Report, Tribometrological Studies in Bioengineering, 6/2004	CETR 0060 - 0070	N/A	Duplicative.	
<b>DTEX-1252</b>	Brochure: "Comprehensive Materials Testing for Mechanic and Tribological Properties: UMT Series Testers"	CETR 0071 - 0074	N/A	802 Irrelevant to infringement. No foundation regarding publication, third-party document.	
<b>DTEX-1253</b>	Graphs, Force-strain data for uncoated sutures during pliability tests	CETR 0076 - 0079	DePuy Mitek's Deposition Exhibit #382	Not best copy, lacks color.	
<b>DTEX-1254</b>	5 m. Length P505T2 Suture Coated [Physical]	PR 008386	DePuy Mitek's Deposition Exhibit #286		
<b>DTEX-1255</b>	US 2 Fiberwire M/C State (before Scoured) [Physical]	PR 008387	DePuy Mitek's Deposition Exhibit #283		
<b>DTEX-1256</b>	US 2 Fiberwire M/C State (Scoured) [Physical]	PR 008388	DePuy Mitek's Deposition Exhibit #282		
<b>DTEX-1257</b>	US 2 Fiberwire M/C State (Scoured/ Dyed) [Physical]	PR 008389	DePuy Mitek's Deposition Exhibit #284		
<b>DTEX-1258</b>	US 2 Fiberwire M/C State (Dyed/ Coated) [Physical]	PR 008390	DePuy Mitek's Deposition Exhibit #285		
<b>DTEX-1259</b>	US 2 Single Pass Coating [Physical]	PR 008391	DePuy Mitek's Deposition Exhibit #342		

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1260</b>	Production Procedure: Pearsalls Sutures, "Pad Stretching and Coating of Fiberwire/Tigerwire/Loops," 7/18/2005	PR 08323	N/A		
<b>DTEX-1261</b>	Flowchart: Pearsalls Sutures, "Fiberwire/Tigerwire Flowchart," 8/05/2005	PR 08324	N/A		
<b>DTEX-1262</b>	Table: Table 1, Approved FiberWire Constructs, 9/27/2004	PR 08382	N/A		
<b>DTEX-1263</b>	Chart: FiberWire Chart, 11/11/2002	PR 08383	N/A		
<b>DTEX-1264</b>	Chart: "Arthrex Products Matrix of Label Product & Development Codes," B. Hallett, November 2005	PR 08384 - 08385	N/A		
<b>DTEX-1265</b>	Letter: to Salvatore Tamburo from D. L. Lawson, 2/17/2006	PR 08455	N/A		
<b>DTEX-1266</b>	Letter: "Certificate of Conformity," Blue Fiber Wire Uncoated, Issued by S. Littlejohns, 2/17/2006	PR 08456	N/A		
<b>DTEX-1267</b>	Letter: "Certificate of Conformity," Blue Fiber Wire, Issued by S. Littlejohns, 2/17/2006	PR 08457	N/A		
<b>DTEX-1268</b>	Letter: to Salvatore Tamburo from D. L. Lawson, "Samples: No Commercial Value," 2/17/2006	PR 08458	N/A		
<b>DTEX-1269</b>	Letter: to Salvatore Tamburo from D. L. Lawson, "Samples: No Commercial Value," 2/17/2006	PR 08459	N/A		
<b>DTEX-1270</b>	DHL Air Waybill Receipt, 2/17/2006	PR 08460	N/A		
<b>DTEX-1271</b>	Record: Pearsalls Sutures Works Order, 1/23/2006	PR 08461 - 08462	N/A		
<b>DTEX-1272</b>	Record: Pearsalls Sutures Blue Singles/Fiberwire Process Record Only to be Dyed on LC3 Programme No. 11	PR 08463	N/A		

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1273</b>	Record: Pearsalls Sutures Bates Machine Med 2174 Solids Check, 9/2/2006	PR 08464	N/A		
<b>DTEX-1274</b>	Record: Pearsalls Sutures Old Bates Machine Line Clearance Record Sheet, 9/2/2006	PR 08465	N/A		
<b>DTEX-1275</b>	Record: Pearsalls Sutures Bates Machine – MED 2174 Process Record for Products Requiring 2 Passes, 7/19/2004	PR 08466	N/A		
<b>DTEX-1276</b>	Record: Pearsalls Sutures Fault Detect Record	PR 08467	N/A		
<b>DTEX-1277</b>	Memo: “Certificate of Conformity,” Blue Fiber Wire, Issued by S. Littlejohns, 2/14/2006	PR 08468	N/A		
<b>DTEX-1278</b>	Chart: Knot Pull Results for Start – Middle – End Reels, Batch Number 28893	PR 08469	N/A		
<b>DTEX-1279</b>	Chart: Results at Intermediate Stage for Batch 28893, 2/10/2006	PR 08470	N/A		
<b>DTEX-1280</b>	Chart: Results at Dye Stage for Batch 28893, 1/28/2006	PR 08471	N/A		
<b>DTEX-1281</b>	Chart: Determination of D&C Blue No. 6 in Polyester, 5/11/2003	PR 08472	N/A		
<b>DTEX-1282</b>	Chart: Results for Batch 28893	PR 08473	N/A		
<b>DTEX-1283</b>	Article: “A Stitch in Time: Fix Curt, break the curse,” Kevin Cook, 07/2005	N/A	N/A	Arthrex agreed is out.	
<b>DTEX-1284</b>	U.S. Patent No. 4,564,013, “Surgical Filaments from Vinylidene Fluoride Copolymers,” Robert Lilienfeld, et al., Inventors	N/A	N/A	Arthrex agreed is out.	
<b>DTEX-1285</b>	Printout of DePuy Mitek Website	N/A	N/A		
<b>DTEX-1286</b>	Printout of Ethicon Website	N/A	N/A		
<b>DTEX-1287</b>	Printout of Johnson and Johnson Website	N/A	N/A		
<b>DTEX-1288</b>	Printout of Arthrex Website	N/A	N/A		

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1289</b>	Printout of Pearsalls Website	N/A	N/A		
<b>DTEX-1290</b>	Printout of CETR Website	N/A	N/A		
<b>DTEX-1291</b>	Physical exhibit - Sample of Teleflex Medical Force Fiber suture	N/A	N/A	401-403 Irrelevant to infringement.	
<b>DTEX-1292</b>	Physical exhibit - Sample of Opus Medical Magnum Force suture	N/A	N/A	401-403 Irrelevant to infringement.	
<b>DTEX-1293</b>	Physical exhibit - Sample of Arthrotek MaxBraid suture	N/A	N/A	401-403 Irrelevant to infringement.	
<b>DTEX-1294</b>	Physical exhibit - Sample of Linvatec Herculine suture	N/A	N/A	401-403 Irrelevant to infringement.	
<b>DTEX-1295</b>	Physical exhibit - Sample of Smith & Nephew UltraBraid suture	N/A	N/A	401-403 Irrelevant to infringement.	
<b>DTEX-1296</b>	Physical exhibit - Sample of Orthocord suture	N/A	N/A		
<b>DTEX-1297</b>	Physical exhibit - Sample of Ethibond suture	N/A	N/A		
<b>DTEX-1298</b>	Physical exhibit - Sample of Tevdek suture	N/A	N/A		
<b>DTEX-1299</b>	Physical exhibit - Sample of coated suture tested by Dr. Norm Gitis in August 2006	N/A	N/A	Arthrex agreed to remove.	
<b>DTEX-1300</b>	Physical exhibit - Sample of uncoated suture tested by Dr. Norm Gitis in August 2006	N/A	N/A	Arthrex agreed to remove.	
<b>DTEX-1301</b>	Certificate of Conformity for Batch No. 32264 - coated FiberWire suture tested by Dr. Gitis in August 2006	PR 008474	N/A	Arthrex agreed to remove.	
<b>DTEX-1302</b>	Certificate of Conformity for Batch No. 32264 - uncoated FiberWire suture tested by Dr. Gitis in August 2006	PR 008475	N/A	Arthrex agreed to remove.	
<b>DTEX-1303</b>	Physical exhibit - AR-1902S - Corkscrew II suture anchor and two #2 braided suture	N/A	N/A		

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1304</b>	Physical exhibit - AR - 1902SF - Corkscrew II suture anchor and two #2 FiberWire suture	N/A	N/A		
<b>DTEX-1305</b>	Claim Charts and Various other Demonstrative Exhibits	TBD	TBD		
<b>DTEX-1306</b>	Responsive Expert Report of Dr. Debi Prasad Mukherjee Concerning Non-Infringement of U. S. Patent No. 5,314,446 And Other Matters; Attached are Exhibits 1-34 (03/24/2006)	N/A	N/A	401-403 802 901 Objection to expert report; objection to certain exhibits: Deposition testimony – hearsay; Other suture patents – irrelevant Documents on Panacryl suture/Orthocord suture/Silkworm – not relevant to infringement issue	
<b>DTEX-1307</b>	Supplemental Test Report on Comparative Suture Testing, June 28, 2007, Norm Gitis	N/A	N/A	401-403 802 901 Mitek Motion in Limine#1	
<b>DTEX-1308</b>	“Comparative Suture Testing”, March 23, 2006, by Norm Gitis	N/A	N/A	401-403 802 901 Mitek Motion in Limine#1.	
<b>DTEX-1309</b>	Arthrex’s Expert Report of Robert T. Burks, M.D.; (03/24/2006)	N/A			

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1310</b>	Arthrex's Expert Report of John F. Witherspoon With Respect To Issues Of Infringement; (3/24/2006)	N/A	N/A	401-403 802 Opinion regarding infringement and discussion of law improper and irrelevant; see Mitek Motion in Limine #4; opinions on issues other than infringement irrelevant	
<b>DTEX-1311</b>	www.forcefiber.com/performance/html (7/9/07)			401-403 802 901 Competitive product not relevant to infringement analysis, no foundation, third-party hearsay document.	
<b>DTEX-1312</b>	Rebuttal Expert Report of Dr. David Brookstein, 4/13/2006				
<b>DTEX-1313</b>	Amended Supplemental Expert Report of Dr. David Brookstein, 7/24/06				
<b>DTEX-1314</b>	Center for Tribology, Inc. Document entitled Comparative Suture Testing		Deposition of David Brookstein (7/27/06) Exhibit #212	401-403 802 401-403 802 901 Mitek Motion in Limine #1.	
<b>DTEX-1315</b>	DePuy Mitek's Responses to Arthrex's First Set of Interrogatories, 04/04/2005			Object to parts under 401-403 Interrogatories 3-11, 13-17 ot relevant to issue of FiberWire infringement	



TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1316</b>	DePuyMitek's Supplemental Responses to Arthrex's First Set of Interrogatories, 07/01/2005			Object to parts under 401-403 Interrogatories 6, 10, 11, 13, 14, 15, 16, 17 not relevant to issue of FiberWire infringement	
<b>DTEX-1317</b>	DePuy Mitek's Responses to Arthrex's Second Set of Interrogatories, 07/20/2005			Object to parts under 401-403 Court construed the term/ Mitek's contentions not relevant	
<b>DTEX-1318</b>	DePuy Mitek's Responses to Arthrex's Third Set of Interrogatories, 11/28/2005			401-403 Int. 20 not relevant to infringement by FiberWire	
<b>DTEX-1319</b>	DePuy Mitek's Second Supplemental Responses to Arthrex's First Set of Interrogatories, 12/05/2005			Object to parts under 401-403	
<b>DTEX-1320</b>	DePuy Mitek's Second Supplemental Responses to Arthrex's Interrogatory No. 15, 12/20/2005			401-403 Int. 15 not relevant to infringement by FiberWire	
<b>DTEX-1321</b>	Chart of sutures		DePuy Mitek's Deposition Exhibit # 234		
<b>DTEX-1322</b>	Sample of Fiberwire suture [Physical]	N/A		403, 901 Not produced during discovery	
<b>DTEX-1323</b>	Sample of Fiberwire suture (uncoated) [Physical]	N/A		403, 901 Not produced during discovery	
<b>DTEX-1324</b>	Design Verification	ARM 02431 - 2668	Depuy Mitek Deposition Exhibit # 139	401-403 802	
<b>DTEX-1325</b>	Design Validation	ARM 02669 - 2763	Depuy Mitek Deposition Exhibit # 140	401-403 802	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1326</b>	Arthrex Test Report #532	N/A	N/A	Arthrex agreed to remove.	
<b>DTEX-1327</b>	Arthrex Test Report #530	N/A	N/A	Arthrex agreed to remove.	
<b>DTEX-1328</b>	Arthrex Test Report #538	N/A	N/A	Arthrex agreed to remove.	
<b>DTEX-1329</b>	Arthrex Test Report #502	N/A	N/A	Arthrex agreed to remove.	
<b>DTEX-1330</b>	Pearsalls Batch Reports	PR 01711 – PR 06186 (with gaps)			
<b>DTEX-1331</b>	Flow Chart labeled “Production Process” (undated)	RK 01698	Depuy Mitek Deposition Exhibit # 182	Duplicate.	
<b>DTEX-1332</b>	3/7/2006, S. Tamburo e-mail string to N. Gitis (cc C. Saber, D. Mukherjee) regarding Suture Testing at CETR	CETR 0038 – 0041; 0090 - 0091	Depuy Mitek Deposition Exhibit # 387	802	
<b>DTEX-1333</b>	11/20/1987 – 11/20/1989, Index – DT185, page from a notebook [described as P.7977 in Exh. No. 161]	PR 08398	Depuy Mitek Deposition Exhibit # 228	401-403 Document related to nonsuture products, unrelated to infringement.	
<b>DTEX-1334</b>	9/19/1989- Kryston Silkworm, page 8052 from Exh. No. 161, notebook page	PR08399	Depuy Mitek Deposition Exhibit # 229	401-403 Document related to nonsuture products, unrelated to infringement.	
<b>DTEX-1335</b>	1/14/1991, Pearsall Sutures Product Specification for the Kryston Silkworm (91)	PR08400	Depuy Mitek Deposition Exhibit # 230	401-403 Document related to nonsuture products, unrelated to infringement.	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1336</b>	1/14/1991, Pearsalls Sutures, production specification for Kryston Silkworm 10 lbs.	PR 08401	Depuy Mitek Deposition Exhibit # 344	401-403 Document related to nonsuture products, unrelated to infringement.	
<b>DTEX-1337</b>	1/22/1991, Pearsalls Sutures, production specification for Kryston Silkworm 151b knot strength	PR 08402	Depuy Mitek Deposition Exhibit # 345	401-403 Document related to nonsuture products, unrelated to infringement.	
<b>DTEX-1338</b>	1/22/1991, Pearsalls Sutures, production specification for Kryston Silkworm 251b knot strength	PR 08403	Depuy Mitek Deposition Exhibit # 346	401-403 Document related to nonsuture products, unrelated to infringement.	
<b>DTEX-1339</b>	Advertisement placed by Kryston for the Silkworm and Merlin fishing lines [undated]	PR 08404 - 08505	Depuy Mitek Deposition Exhibit # 347	401-403 802 Third-party hearsay document, lacking foundation, relates to nonsuture products, unrelated to infringement.	
<b>DTEX-1340</b>	4/20/1990, Stephen J. Wills facsimile to Genoa Engineering (John Jones) attaching Dyneema SK60 Polyethylene fibre brochure [attachment lacking]	PR 08406	Depuy Mitek Deposition Exhibit # 348	401-403, 802, 901 Document relates to nonsuture products, unrelated to infringement. Document lacks foundation, hearsay.	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1341</b>	2/19/1991, Steve Crandall (Ashaway Line & Twine Mfg. Co.) facsimile to S. Wills (Pearsalls) regarding a lower price on X-613 [bears marginalia]	PR 08407	Depuy Mitek Deposition Exhibit # 349	401-403, 802 Third-party hearsay document, lacking foundation, relates to nonsuture products, unrelated to infringement.	
<b>DTEX-1342</b>	4/23/1990, S. Wills facsimile to John Jones attaching a table of fibre projections	PR 08408 - 08409	Depuy Mitek Deposition Exhibit # 350	401-403, 802, 901 Document relates to nonsuture products, unrelated to infringement. Document lacks foundation, hearsay.	
<b>DTEX-1343</b>	1/4/1990, Pearsalls analysis of Kevin Nash Gama Braid manufactured by Braided International Lines	PR 08410	Depuy Mitek Deposition Exhibit # 351	401-403 802, 901 Document relates to nonsuture products, unrelated to infringement. Document lacks foundation, hearsay.	
<b>DTEX-1344</b>	2/19/1990, Stephen Wills internal memo regarding fishing line products, Kryston price list dated 7/23/1990	PR 08411 - 08413	Depuy Mitek Deposition Exhibit # 352	401-403, 802, 901 Document relates to nonsuture products, unrelated to infringement. Document is hearsay, lacks foundation.	

TEX #	Description	Bates Range	Previously Used	Objections	In/Out
<b>DTEX-1345</b>	7/14/1993, Pearsalls invoices (3) to Kryston for Silkworm, Multistrand, Siuper Silk	PR 08430 – 08432	Depuy Mitek Deposition Exhibit # 353	401-403 Document relates to nonsuture products, unrelated to infringement.	
<b>DTEX-1346</b>	4/18/1989, Minutes of meeting with Cyanamid GB Ltd. [redacted]	PR 08392 – 08393	Depuy Mitek Deposition Exhibit # 354	401-403 Document relates to nonsuture products, unrelated to infringement. Arthrex refused to produce the portion of the document “redacted due to relevancy.”	
<b>DTEX-1347</b>	3/23/1990, copies of pictures from magazines featuring fisherman holding large fishes caught with Kryston fishing line	PR 08414 – 00819	Depuy Mitek Deposition Exhibit # 355	401-403 802 Third-party hearsay document, lacking foundation, relates to nonsuture products, unrelated to infringement.	
<b>DTEX-1348</b>	Exclusive Manufacturing Agreement between Arthrex and Pearsalls, 5/9/2002	ARM 001696 – ARM 001698			
<b>DTEX-1349</b>	Expert Report of Dr. David Brookstein with attached exhibits, 3/3/06	N/A			

Note: Defendants reserve the right to amend this list of trial exhibits and to use trial exhibits included on DePuy Mitek's list. Demonstrative exhibits, summary exhibits, blow-ups and the like will be exchanged by the parties closer to trial.

# **EXHIBIT 3**

Confidential Deposition of:  
Ilya Koyfman

February 22, 2006

Page 1

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

C.A. No. 04-12457 PBS

-----x  
DePUY MITEK, INC.,

A Massachusetts Corporation,

Plaintiff,

v.

ARTHREX INC.,

A Delaware Corporation,

Defendants.  
-----x

\* \* \* CONFIDENTIAL \* \* \*

DEPOSITION OF ILYA KOYFMAN

Somerset, New Jersey

February 22, 2006

Reported by:

MARY F. BOWMAN, RPR, CRR

JOB NO.: SE232

**TRAVEL  
TRANSCRIPT**



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1 KOYFMAN - Confidential  
2 and -- I think markets changed. They had been  
3 looking for a product which would be like that.  
4 Q. Excuse me?  
5 A. The market changed. I think it was  
6 need for a suture which would withstand  
7 arthroscopic use.  
8 Q. At the time you started your work on  
9 this project, were you familiar that Arthrex had  
10 come up with the Fiber Wire product?  
11 A. Yes.  
12 Q. Was Mitek and Ethicon developing the  
13 Orthocord product to try and compete with  
14 Arthrex's Fiber Wire product?  
15 A. I think that was part of the need, in  
16 order to compete.  
17 Q. At the beginning of the project, was  
18 the idea to come out with a product that was just  
19 like Arthrex's Fiber Wire product?  
20 MR. BONELLA: Object to form.  
21 A. That was an early discussion too,  
22 yeah.  
23 Q. What do you mean that that was a  
24 discussion?  
25 A. I mean when you look at market, you

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1 KOYFMAN - Confidential  
2 look at the needs, what was going on in terms of  
3 competition. You see the products and you try to  
4 assess which way you want to go.  
5 Q. Are you familiar with what materials  
6 are used to make the braid in the Arthrex suture?  
7 A. Yes.  
8 Q. What is it?  
9 A. It is ultra high molecular weight -- I  
10 don't know the origin because -- origin of that  
11 material. And polyester.  
12 Q. And PET?  
13 A. Um-hm.  
14 Q. Is that a yes?  
15 A. Yes.  
16 Q. And it has a coating on it?  
17 A. Yes.  
18 Q. Was the original idea in the  
19 development of Orthocord that it should also be  
20 ultra high molecular weight PE and PET with a  
21 coating on it?  
22 MR. BONELLA: Object to form.  
23 A. Any suture requires coatings.  
24 Q. What about the other aspects that I  
25 mentioned in my question?

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1 KOYFMAN - Confidential  
2 Let me, just so my question is clear,  
3 was it the original idea during the development  
4 to develop a suture that was made of ultra high  
5 molecular weight PE and PET and then coated?  
6 A. It was, in the concept phase, that was  
7 one of our ideas, yeah.  
8 Q. Wasn't that really the idea?  
9 MR. BONELLA: Object to form.  
10 A. The concept was influenced by many,  
11 many people. So as I said, it was one of the  
12 ideas.  
13 Q. Well, at the beginning, what other  
14 ideas were being considered? I am trying to  
15 distinguish, so my question is clear, Mr. Koyfman,  
16 at the beginning, the original concept as opposed  
17 to changes that may have happened later on?  
18 A. What do you mean by beginning?  
19 Q. When the first decision was made as to  
20 what kind of product you wanted to have? What the  
21 materials would be?  
22 A. The first decision was to use ultra  
23 high molecular weight and nonabsorbable material.  
24 Q. Was the nonabsorbable material being  
25 PET?

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1 KOYFMAN - Confidential  
2 A. As I recall, yes.  
3 Q. Let me show you what has been  
4 previously marked as Defendant's Exhibit 14. I  
5 ask if you are familiar with that.  
6 A. Um-hm, yes.  
7 Q. Is this a document that you wrote?  
8 A. It looks like.  
9 Q. Do you know why you wrote this  
10 document?  
11 A. I think it was used for a presentation  
12 in Cornelia, but I'm not sure.  
13 Q. Do you know when approximately you  
14 created this document?  
15 A. A couple of years ago probably.  
16 Q. Could you look at the third paragraph,  
17 sir. It says, "The agreement was to develop a 'me  
18 too suture.' it looked to everyone as a  
19 straightforward project. Just find raw material  
20 suppliers, (UHMWPE and polyester), use  
21 polybutylate coating in piggyback on the Ethibond  
22 processing conditions."  
23 Is that an accurate description of the  
24 original agreement as to what suture to  
25 produce?



Confidential Deposition of:  
Ilya Koyfman

February 22, 2006

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**KOYFMAN - Confidential**

A. Yes.

**Q. What did you mean when you wrote a "me too suture"?**

A. I think it is a marketing expression of a product which may already exist in the market.

**Q. And the "me too suture" was referring to what product?**

Let me rephrase that question. When you wrote to develop a "me too suture," what was the suture that was being compared to?

A. I think it was compared to the existing product which was already on the market which is Fiber Wire.

MR. BONELLA: Can I just mark the transcript confidential, nonprosecution counsel only since we are getting into the developmental work.

**Q. Mr. Koyfman, let me show you what has been marked as Defendant's Exhibit 15 in a previous deposition. I ask if you recall this document.**

A. Yes, I think it looks familiar.

**Q. What is it?**

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**KOYFMAN - Confidential**

A. It was a project update presentation either given at Mitek or given at Ethicon.

**Q. Now, when we discussed Defendant's Exhibit 14, the previous exhibit which talked about the original agreement being ultra high molecular weight PE and polyester, that's not the ultimate product -- the ultimate combination that's in Orthocord, correct?**

A. Right.

**Q. Why was the decision made to change to a different -- what are the two materials that are braided together in Orthocord?**

A. It is ultra high molecular weight polyethylene and PDS.

**Q. Why was the decision made to not make a braided suture of ultra high molecular weight PE and PET?**

MR. BONELLA: Are there any legal reasons why that decision was made? If your understanding is based on anything, a communication with counsel, that would be privileged information and I instruct you not to answer that.

But if there are nonlegal reasons why

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**KOYFMAN - Confidential**

that are not based on communications with counsel, that decision was made for technical reasons or decisions made by technical people independent of counsel, then you can answer the question.

A. It was a legal reason.

**Q. OK. What was that legal reason?**

MR. BONELLA: Can you make that more general?

MR. SABER: I am not -- I don't agree that this is privileged.

MR. BONELLA: OK, well, I instruct you not to answer. I instruct you not to answer.

**Q. Will you answer the question?**

A. I was instructed not to answer.

**Q. OK. Let's turn back to Defendant's Exhibit 15. And I ask if you if you would turn to page 39, Bates number DMI 039507.**

A. Page -- which one?

**Q. DMI 039507.**

A. 507.

**Q. Do you see that page, sir?**

A. Yes.

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**KOYFMAN - Confidential**

**Q. Do you see this talks about legal/IP landscape? And this refers to a -- it was referring it a United States Patent 5,318,575. Do you see that, sir?**

A. Yes.

**Q. Which, as you will see, is Exhibit 164 that we discussed earlier today.**

A. I see that.

**Q. Is the reason that the idea of ultra high molecular weight PE, together with PET was abandoned because of the possible conflict with the '575 patent?**

MR. BONELLA: Again, if there were discussions among technical people and technical people made this decision, then you can answer that question. But if it is legal, you were instructed for legal reasons, then you shouldn't answer the question.

So if there were technical people and technical reasons why, then you should answer the question. If you need a break to sort it out in your mind and we can talk about it to figure it out to the extent --

13 (Pages 46 to 49)

# **EXHIBIT 4**

1/10/2006 Weber, Neil

1 UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

2 C.A. NO. 04-12457 PBS  
3  
4

5 \_\_\_\_\_ )  
DePUY MITEK, INC., )  
Plaintiffs, )  
6 )  
vs. )  
7 )  
ARTHREX, INC., a Delaware )  
8 corporation, )  
Defendants. )  
9 \_\_\_\_\_ )

10  
11  
12  
13 DEPOSITION of DePUY MITEK BY NEIL

14 D. WEBER, called as a witness by and on behalf of  
15 the Defendant, pursuant to the applicable  
16 provisions of the Federal Rules of Civil Procedure,  
17 Rule 30 (b) (6), before P. Jodi Ohnemus, Notary  
18 Public, Certified Shorthand Reporter, Certified  
19 Realtime Reporter, and Registered Merit Reporter,  
20 within and for the Commonwealth of Massachusetts,  
21 at the Four Points Sheraton Hotel, 1125 Providence  
22 Boston Highway, Norwood, Massachusetts, on Tuesday,  
23 10 January, 2006, commencing at 9:08 a.m.

1 MS. MALINOSKI: I'm not instructing him  
2 not to answer. I said he can answer. I'm just  
3 preserving my objection.

4 A. I was not part of the conversation.

5 Q. Okay. Well, what's your understanding as  
6 to -- what's DePuy Mitek's understanding as to why  
7 the patent was assigned to DePuy Mitek?

8 A. My understanding of it --

9 MS. MALINOSKI: You mean Neil Weber's  
10 understanding or DePuy Mitek's --

11 MR. SABER: Well, he's testifying for  
12 DePuy Mitek, so I want to know DePuy Mitek's  
13 understanding.

14 MS. MALINOSKI: Okay.

15 A. My understanding, as Neil Weber  
16 representing DePuy Mitek, is that it was assigned  
17 to us because the company, Mitek, that had most  
18 need or use for the patent was -- deemed it was  
19 appropriate for us to take ownership of it.

20 Q. Why did DePuy Mitek have the most need for  
21 the patent?

22 A. Because -- my understanding is because it  
23 applied to -- specifically to a product that we are  
24 marketing.

25 Q. Does it apply to the Orthocord product?

1 A. Yes.

2 Q. Does the Orthocord product fall within  
3 this patent?

4 MS. MALINOSKI: I'll object to the extent  
5 that's asking him for a legal conclusion that's  
6 beyond the scope, and I think, with all due  
7 respect, beyond his expertise?

8 A. I don't know.

9 Q. Well, I'm trying to understand what you  
10 mean when you say that it applied to a product that  
11 you have?

12 A. It applied to a market that we are  
13 addressing.

14 Q. What do you mean by that?

15 A. I simply mean that it applies to a -- I  
16 don't know how I can really clarify that any  
17 differently.

18 Q. Well, I don't understand your answer. It  
19 applies to a market?

20 A. It's -- it pertains to the marketplace  
21 that Mitek serves.

22 Q. Does the 446 patent cover a high-strength  
23 suture?

24 MS. MALINOSKI: And again, to the extent  
25 he can answer, it's beyond the scope and his

1 expertise, but he can answer if he can.

2 A. I don't know.

3 Q. Isn't it true that you've received -- that  
4 DePuy Mitek received the assignment so it could be  
5 the plaintiff to sue Arthrex.

6 MS. MALINOSKI: And I'll object to that as  
7 harassing the witness, and also to the extent it  
8 would reveal any communications and beyond the  
9 scope of the notice.

10 MR. SABER: Well, it's right to the heart  
11 of the scope of the notice, and it can't be an  
12 attorney/client privilege. I mean, why DePuy Mitek  
13 obtained this --

14 MS. MALINOSKI: Chuck, I'm not instructing  
15 him not to answer. I said he could answer the  
16 question.

17 A. Can you repeat the question.

18 MR. SABER: Could you read it back.

19 (Question read back.)

20 A. No.

21 Q. When DePuy Mitek received the assignment,  
22 were they considering suing? Was a Johnson &  
23 Johnson company considering suing Arthrex for a  
24 patent infringement under this patent?

25 MS. MALINOSKI: And I'll object, and I'll

1 launched?

2 A. No.

3 Q. Okay.

4 A. That was what I was trying to convey.

5 Q. Okay. Do you know whether it was launched  
6 prior to the time that DePuy Mitek launched its  
7 Orthocord product?

8 A. I don't know.

9 Q. Okay.

10 MS. MALINOSKI: Just a belated objection  
11 to the question to the extent it's calling for  
12 dates for the various competitors. I think that is  
13 beyond the scope of this notice.

14 MR. SABER: I disagree, but that's okay.

15 Q. Isn't it correct that prior to the launch  
16 of Orthocord DePuy Mitek was the only sports  
17 medicine company that didn't have a high-strength  
18 suture?

19 A. I'm not sure if we were the only one, but  
20 I know that several other what we refer to as  
21 sports medicine companies did have them.

22 Q. Isn't it true that DePuy Mitek considered  
23 it an urgent need to have a high-strength suture  
24 because they were the only sports medicine company  
25 without a high-strength suture?



1/10/2006 Weber, Neil

1 MS. MALINOSKI: Objection. Lack of  
2 foundation. Assumes facts not in evidence.

3 A. As I just said, I don't know if we were  
4 the only one or not. But I do know we felt it was  
5 a priority of ours to have one.

6 Q. And why was it a priority?

7 A. We felt it was a priority to be properly  
8 addressing the customers' needs in the marketplace.

9 (DMI039647-683 marked D-54.)

10 Q. Let me show you what's been marked as  
11 Defendant's Exhibit 54 and ask if you're familiar  
12 with that.

13 A. Yes, I've seen the document before.

14 Q. Okay. What is it?

15 A. It appears to be a presentation for a --  
16 what's referred to as a design review, which is  
17 basically a development milestone during which the  
18 development team reviews status with management.

19 Q. Could you turn to -- who reviews with  
20 management, did you say, the development team?

21 A. Yes.

22 Q. And was the development team for this  
23 product a combination of Ethicon and DePuy Mitek  
24 people?

25 A. The answer is -- I was not part of the



1/10/2006 Weber, Neil

1 team, but if I refer to Page 2, "project team"  
2 consists of Mitek and Ethicon team members. So,  
3 the answer is yes.

4 Q. Am I correct that Shelby Cook was the head  
5 of the team on the Mitek side?

6 MS. MALINOSKI: Objection. Assumes facts  
7 not in evidence.

8 A. I don't know. It appears that way, but --

9 Q. Could you turn to Page DMI039672.

10 A. Yes.

11 Q. Do you see the third point under the first  
12 bullet? It says, "Urgent need -- only sports  
13 medicine company without high-strength suture"?

14 A. Yes.

15 Q. Does that refresh your recollection that  
16 DePuy Mitek felt that they had an urgent need for a  
17 high-strength suture because they were the only  
18 sports medicine company without a high-strength  
19 suture?

20 MS. MALINOSKI: Objection. Vague as to  
21 time.

22 Q. As of April 2004.

23 A. My answer to that question is I understand  
24 what the bullet means, but whether the bullet is  
25 accurate or not, I can't speak to. It was clearly

**1/10/2006 Weber, Neil**

1 deemed an urgent need, so that part of the  
2 statement I absolutely agree with. Whether or not  
3 we were truly the only sports medicine company with  
4 or without, I don't know.

5 Q. But was that -- is it true that that was  
6 the rationale, that they believed that they were  
7 the only company left that didn't have a -- only  
8 sports medicine company left that didn't have a  
9 high-strength suture and that's why they had an  
10 urgent need?

11 A. Can you --

12 Q. That's what -- is it correct that that was  
13 DePuy Mitek's belief at that time in April of 2004?

14 A. As I said before, I think Mitek's belief  
15 was, to properly address the marketplace, we needed  
16 a high-strength suture.

17 Q. But was it Mitek's belief in April of 2004  
18 that the reason they had this urgent need was  
19 because they believed they were the only sports  
20 medicine company without a high-strength suture?

21 MS. MALINOSKI: Object as beyond the  
22 scope.

23 A. I don't know.

24 Q. Do you have any reason to doubt that line,  
25 "Urgent need -- only sports medicine company

# **EXHIBIT 5**

11/15/2005 Cook, Shelby

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MASSACHUSETTS

3 C.A. No. 04-12457 PBS

4 \* \* \* \* \*

5 DePUY MITEK, INC., \*

6 Plaintiff \*

7 v. \*

8 ARTHREX, INC., a Delaware \*

9 corporation, \*

10 Defendant \*

11 \* \* \* \* \*

12 VOLUME I

13 PAGES 1-245

14  
15 DEPOSITION OF DePUY MITEK, INC. by

16 SHELBY COOK KORNBLUTH, a witness called on

17 behalf of the Defendant, pursuant to the

18 Federal Rules of Civil Procedure, before

19 Jessica L. Williamson, Registered Merit

20 Reporter, Certified Realtime Reporter and

21 Notary Public in and for the Commonwealth of

22 Massachusetts, at the Hilton Hotel, 25

23 Allied Drive, Dedham, Massachusetts, on

24 Tuesday, November 15, 2005, commencing at

25 9:01 a.m.

11/15/2005 Cook, Shelby

1 be a little different, but as far as form  
2 goes?

3 A. The form changes every year, 18 months,  
4 depending on what management wants to see.

5 Q. In this project do you remember how many  
6 different forms there were?

7 A. Probably three. That's my best guess.

8 Q. How many were in forms that were like  
9 Defendant's Exhibit 9?

10 A. The majority.

11 Q. And the ones that were different, were those  
12 your earlier ones?

13 A. Yes.

14 Q. Could you turn to the last page of the  
15 document, please.

16 A. Uh-huh.

17 Q. Is this an accurate -- or what was this last  
18 page, which is Bates Nos. 39244?

19 A. Project team.

20 Q. And what is the Orthocord project team?

21 A. It's a group of individuals that touch  
22 the -- that have any responsibilities for  
23 the project, even down to the most minute  
24 detail.

25 Q. I see, it says there's a Mitek team and an

**11/15/2005 Cook, Shelby**

1 Ethicon team. Why were there teams from  
2 both entities?

3 A. We subcontracted Ethicon to manufacture the  
4 suture for us.

5 Q. Did Ethicon have any role in the Orthocord  
6 project other than manufacturing the suture?

7 A. They provided consultation for some  
8 development -- of the development aspects.

9 Q. Could you be a little more specific on that?

10 A. They provided recommendations on the suture,  
11 and Mitek took those recommendations  
12 weighted against the test results, as well  
13 as surgeon feedback, and determined the  
14 suture that we went to market with.

15 Q. Do you recall who in particular from the  
16 Ethicon team made the recommendations on the  
17 suture?

18 A. There were several --

19 MR. FALKE: Objection, outside the  
20 scope of the notice, but you can answer if  
21 you know.

22 A. Several people.

23 Q. Who do you recall?

24 A. Mark Mooney had some recommendations, Ilya  
25 Koyfman and John Karl had some



11/15/2005 Cook, Shelby

1 can answer.

2 A. The only polyethylene available to make  
3 high-strength suture is ultra high molecular  
4 weight polyethylene. That is the only  
5 material available in polyethylene.

6 Q. To make a high-strength suture?

7 A. To make suture, period.

8 Q. You wouldn't use polyethylene to make suture  
9 other than ultra high molecular weight  
10 polyethylene?

11 MR. FALKE: Outside the scope. Go  
12 ahead.

13 A. No. It's not available. You cannot get  
14 polyethylene fiber in any other form than  
15 ultra high molecular weight polyethylene.

16 Q. Could you use any other kind of polyethylene  
17 to make a high-strength suture?

18 MR. FALKE: Outside the scope.

19 A. No.

20 Q. Is Orthocord a high-strength suture?

21 A. Yes.

22 Q. Prior to offering Orthocord, did DePuy Mitek  
23 have a high-strength suture for any of its  
24 products?

25 A. No.

11/15/2005 Cook, Shelby

1 Q. Ethibond is not considered a high-strength  
2 suture?

3 A. No.

4 Q. Panacryl's not considered a high-strength  
5 suture?

6 A. No.

7 Q. Okay. Who was the first company to sell a  
8 high-strength suture?

9 MR. FALKE: Objection, outside the  
10 scope of the notice. You can answer if you  
11 know.

12 A. I believe it was Arthrex.

13 Q. And that was the Fiberwire product?

14 A. Yes.

15 Q. Isn't it correct that DePuy Mitek wanted to  
16 develop a high-strength suture to compete  
17 with Fiberwire?

18 MR. FALKE: Objection, outside the  
19 scope of the notice.

20 A. Yes.

21 Q. Is it also true that DePuy Mitek considered  
22 that they were losing their competitive edge  
23 in the marketplace if they did not develop a  
24 high-strength suture?

25 MR. FALKE: Objection, outside the



11/15/2005 Cook, Shelby

1 scope of the notice.

2 A. Yes.

3 Q. And is it true that DePuy Mitek considered  
4 Fiberwire to be a potentially significant  
5 threat?

6 MR. FALKE: Objection, outside the  
7 scope of the notice.

8 A. Yes.

9 Q. And is it correct that DePuy Mitek believed  
10 that it couldn't meet its marketing  
11 objectives without developing a high-  
12 strength suture?

13 MR. FALKE: Objection, outside the  
14 scope of the notice.

15 A. Yes.

16 Q. In the original plans to develop a high-  
17 strength suture, is it correct that they  
18 wanted to mimic Fiberwire, that DePuy Mitek  
19 wanted to mimic FiberWire?

20 MR. FALKE: Outside, outside the  
21 scope of the notice, object to the form.  
22 Chuck, this is Topic 11. She's not here to  
23 talk about this. These are clearly Topic 11  
24 questions. You can answer if you know.

25 MR. SABER: Well, I mean she was

11/15/2005 Cook, Shelby

1 the one that was in charge of this product.

2 MR. FALKE: Doesn't matter. We're  
3 not here to talk about Topic 11.

4 MR. SABER: Fine. She can answer  
5 the question.

6 MR. FALKE: If she knows.

7 MR. SABER: Could you read back the  
8 question. I know with the colloquy I'm sure  
9 you lost the question.

10 (Record read.)

11 MR. FALKE: Objection, outside the  
12 scope of the notice. Objection, vague. You  
13 can answer if you know.

14 A. That was a potential option.

15 Q. And is it true that the product that you  
16 wanted to develop in the early stages was  
17 considered a "me too" suture to Fiberwire?

18 MR. FALKE: Objection, vague.

19 Vague as to the "me too." Objection,  
20 outside the scope of the notice. You can  
21 answer if you know.

22 A. I wasn't -- I wasn't involved in the first  
23 few months of the project. I took it over.

24 Q. Who was involved in the beginning?

25 A. Jonathan Howe.

# **EXHIBIT 6**

Deposition of:  
Hal Brent Woodrow

November 2, 2005

Page 1

1  
2 UNITED STATES DISTRICT COURT

3 DISTRICT OF MASSACHUSETTS

4 C.A. No. 04-12457 PBS

5 -----x  
**TRAVEL  
TRANSCRIPT**

6 DePUY MITEK, INC.,

7 a Massachusetts corporation,

8 Plaintiffs,

9 v.

10 ARTHREX, INC.

11 a Delaware Corporation,

12  
13 Defendant.  
14 -----x

15  
16 DEPOSITION OF HAL BRENT WOODROW

17 New Brunswick, New Jersey

18 November 2, 2005

19  
20 Reported by:

21 MARY F. BOWMAN, RPR, CRR

22 JOB NO. 97  
23  
24  
25

Deposition of:  
Hal Brent Woodrow

November 2, 2005

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1 WOODROW  
2 **Q. Polypropylene is another material**  
3 **listed on the lubricious side, right?**  
4 A. Yes, yes. And I think those of  
5 ordinary skill in the art reading this  
6 specification would be able to determine which of  
7 the lubriciously listed polymers would tend to add  
8 strength to the material, to the ultimate braided  
9 construction as well as adding the lubricious  
10 characteristics.  
11 **Q. Does the patent application itself**  
12 **teach a person of ordinary skill in the art --**  
13 A. Those of ordinary skill in the art are  
14 assumed to know this situation.  
15 **Q. So was there a need at all to disclose**  
16 **any of these materials?**  
17 MS. MALINOSKI: Objection, vague.  
18 A. Yeah. Could you restate the question.  
19 **Q. Why were certain materials listed if a**  
20 **person of ordinary skill in the art wouldn't even**  
21 **need them?**  
22 MS. MALINOSKI: Objection,  
23 argumentative.  
24 A. The preferred materials having  
25 lubricious properties were listed.

Page 83

1 WOODROW  
2 **Q. Do you know whether Ethicon knew of**  
3 **the existence of Spectra in 1992?**  
4 A. I don't know.  
5 **Q. Do you know when Spectra came out? Do**  
6 **you know if it was around in 1992?**  
7 A. I don't remember the date that it came  
8 out. It was around the same time period though.  
9 Actually, I believe it was before this.  
10 **Q. What makes you say that?**  
11 A. I remember seeing it at Phillips  
12 Petroleum and I left there in '91.  
13 **Q. Was it used for at Phillips Petroleum?**  
14 A. It was a demonstration. It wasn't  
15 used for anything.  
16 **Q. Do you know whether Ethicon believed**  
17 **Spectra could be used in sutures in 1992?**  
18 MS. MALINOSKI: Asked and answered.  
19 A. It is a polyethylene polymer. It has  
20 been a -- it has been identified as an appropriate  
21 material for this application.  
22 **Q. Is that a yes or a no?**  
23 A. That's a yes.  
24 **Q. So you are changing your answer**  
25 **earlier?**

Page 84

1 WOODROW  
2 MS. MALINOSKI: Objection,  
3 argumentative, mischaracterizes his  
4 testimony.  
5 **Q. I asked you earlier if you knew**  
6 **whether Ethicon knew of the existence in 1992 and**  
7 **you said you didn't know. Are you changing your**  
8 **answer now?**  
9 A. Your second question was -- --  
10 MS. MALINOSKI: The second question,  
11 do you know whether Ethicon believed Spectra  
12 could be used in sutures in 1992.  
13 **Q. Right. So if you didn't know whether**  
14 **Ethicon knew it existed in 1992, how could they**  
15 **know anything about its use in sutures in 1992?**  
16 A. I thought I heard, do you know whether  
17 Ethicon believed Spectra could be used in sutures,  
18 I didn't hear the "1992" aspect of it.  
19 **Q. What's your answer with the 1992**  
20 **aspect?**  
21 A. I'm not 100 percent certain on that  
22 issue as to the internal knowledge of Ethicon in  
23 1992 vis-a-vis Spectra.  
24 **Q. OK. Do you have any knowledge of when**  
25 **Ethicon first heard of Spectra?**

Page 85

1 WOODROW  
2 A. I think that goes beyond the scope of  
3 the 30(b)(6).  
4 MS. MALINOSKI: Objection, beyond the  
5 scope of the notice.  
6 **Q. I appreciate that, counselor. But do**  
7 **you know?**  
8 MS. MALINOSKI: If you know, you can  
9 answer.  
10 A. I can't say for sure.  
11 **Q. Mr. Woodrow, could you turn to the**  
12 **page that's labeled -- it would be in Exhibit 3,**  
13 **the one that is labeled part 2 of 2. And it would**  
14 **be the page that is labeled 186 on the bottom, DMI**  
15 **186, third page in. Do you see that it looks like**  
16 **an office action dated July 8, 1992?**  
17 A. Yes, I see the office action.  
18 **Q. And it is labeled 186 on the bottom,**  
19 **right?**  
20 A. Yes.  
21 **Q. Did you review this office action in**  
22 **1992?**  
23 A. Are you deposing me or deposing the  
24 company?  
25 **Q. You are the one that worked on it,**

22 (Pages 82 to 85)



Deposition of:  
Hal Brent Woodrow

November 2, 2005

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**WOODROW**

1  
2 **right?**  
3 A. No, the '92? No. Let me check. Oh,  
4 yes. OK.  
5 MS. MALINOSKI: Are you asking him as  
6 a 30(b)(6) or as Mr. Woodrow?  
7 **Q. Did Ethicon review this office action**  
8 **in 1992?**  
9 A. Ethicon had its attorneys review this  
10 office action in 1992.  
11 **Q. Were you the attorney?**  
12 A. Yes, I was the attorney who reviewed  
13 the office action.  
14 **Q. Was there anyone else who reviewed the**  
15 **office action?**  
16 A. No.  
17 **Q. Did Ethicon prepare a response to the**  
18 **office action?**  
19 A. Yes.  
20 MS. MALINOSKI: Can we go off the  
21 record for a second.  
22 (Pause)  
23 A. The July 8, 1992 office action is --  
24 the next paper in, it is out of order, it is a  
25 1994 response. I did not, Hal Woodrow did not

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**WOODROW**

1  
2 respond to that 1992 office action. Matthew  
3 Goodwin did.  
4 **Q. But Ethicon responded to the office**  
5 **action?**  
6 A. Yes.  
7 **Q. OK. And can you turn to the document**  
8 **that's labeled DMI 194?**  
9 A. Yes.  
10 **Q. Is that the response that Ethicon**  
11 **prepared to the office action?**  
12 A. It says it is responsive, yes.  
13 **Q. It is entitled "amendment," but I**  
14 **don't see any claims amended here. Do you?**  
15 A. No, there is no -- there is an  
16 election of species, comments about claims, but  
17 there are no amendments to the claims that I see.  
18 **Q. That might just be a mislabeling then?**  
19 A. Yes, it is probably more a response  
20 than an amendment.  
21 **Q. Do you see on page 187, there is a**  
22 **restriction requirement?**  
23 A. Of the office action of the patent  
24 office.  
25 **Q. The page labeled 187, this is part of**

Page 88

**WOODROW**

1  
2 **the office action?**  
3 A. Yes.  
4 **Q. So you see there is a restriction**  
5 **requirement?**  
6 A. Yes.  
7 **Q. There has been a distinction made by**  
8 **the office as to claims 1 through 20 which are**  
9 **drawn to a heterogeneous braid and claims 21**  
10 **through 24 drawn to a surgical suture, do you see**  
11 **that?**  
12 A. Yes, I see that.  
13 **Q. What did Ethicon do in response to**  
14 **that restriction?**  
15 A. In the paper filed by Matt Goodwin on  
16 August 6, 1992, Ethicon elected to pursue  
17 prosecuting claims 21 through 24.  
18 **Q. OK. I think there was actually a**  
19 **provisional election made, too, on page 188.**  
20 **There is a reference from the examiner to a**  
21 **telephone call with Matthew Goodwin. Do you see**  
22 **that?**  
23 A. Yes, there was a telephone election on  
24 June 23.  
25 **Q. So Mr. Goodwin elected claims 21**

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**WOODROW**

1  
2 **through 24, is that right?**  
3 A. Yes.  
4 **Q. 21 through 24 were directed to a**  
5 **surgical suture, correct?**  
6 A. Yes.  
7 **Q. Do you know if a divisional was ever**  
8 **filed by Ethicon?**  
9 MS. MALINOSKI: Objection, vague.  
10 **Q. Do you know if a divisional from this**  
11 **application was ever filed?**  
12 MS. MALINOSKI: I thought you said  
13 provisional.  
14 MR. TAMBORO: Divisional. I was  
15 wondering what the look was.  
16 MS. MALINOSKI: That's why I gave you  
17 that look. OK.  
18 A. Your question is whether a divisional  
19 was claimed for files 1 through 20?  
20 **Q. Yes, the nonelected claims, yes.**  
21 A. It is not part of the prosecution  
22 history of this file, so I have not reviewed that.  
23 **Q. You don't know?**  
24 A. I don't know.  
25 **Q. Do you know whether any continuations**

23 (Pages 86 to 89)

# **EXHIBIT 7**

Deposition of:  
Matthew Goodwin

January 17, 2006

Page 1

1  
2 UNITED STATES DISTRICT COURT

3 DISTRICT OF MASSACHUSETTS

4 C.A. No. 04-12457 PBS

5 -----x  
6 DePUY MITEK, INC.,

7 A Massachusetts Corporation,

8 Plaintiff,

9 v.

10 ARTHREX INC.,

11 A Delaware Corporation,

12 Defendants.  
13 -----x

**TRAVEL  
TRANSCRIPT**

14  
15  
16 DEPOSITION OF MATTHEW GOODWIN

17 New Brunswick, New Jersey

18 January 17, 2006  
19

20 Reported by:

21 MARY F. BOWMAN, RPR, CRR

22 JOB NO.: SE 173  
23  
24  
25



Deposition of:  
Matthew Goodwin

January 17, 2006

Page 154

1 GOODWIN  
2 payment of patent bonuses for patent applications  
3 which were assigned to Ethicon.  
4 Q. Is that his primary role?  
5 A. I don't know what his primary role  
6 was.  
7 Q. Was he a medical doctor?  
8 A. I don't know what his formal  
9 background was.  
10 Q. I am going to hand you what has been  
11 previously marked Defendant's Exhibit 5. Let me  
12 ask you to take a look at that. Do you know what  
13 this is, Mr. Goodwin?  
14 A. This is an assignment where Ethicon is  
15 assigning the '446 patent and its counterparts to  
16 DePuy Mitek.  
17 Q. Do you know if there are any  
18 counterparties?  
19 A. I do not know.  
20 Q. On page 2 of the exhibit, is that your  
21 signature for Ethicon Inc.?  
22 A. Yes, it is.  
23 Q. Why did Ethicon assign the patent to  
24 DePuy Mitek?  
25 MS. MALINOSKI: I will instruct you

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1 GOODWIN  
2 not to answer to the extent it would reveal  
3 any work product or any attorney/client  
4 privileged information. If you can answer  
5 factually, you can answer.  
6 A. The assignment was for the purpose of  
7 assigning the patent to the principal party in  
8 interest which in this case is DePuy Mitek.  
9 Q. What does a principal party of  
10 interest mean?  
11 A. It is the party that is most affected  
12 in connection with the infringement of the '446  
13 patent.  
14 Q. What do you mean by most connected?  
15 A. Most affected.  
16 Q. I am sorry, what do you mean by most  
17 affected?  
18 A. It is the party that is being damaged  
19 in connection with the infringement of the '446  
20 patent as a result of Arthrex's continued sale of  
21 infringing sutures.  
22 Q. How was DePuy Mitek any more damaged  
23 than Ethicon?  
24 A. DePuy Mitek is the business unit of  
25 Johnson & Johnson which manufactures, develops and

Page 156

1 GOODWIN  
2 markets suture anchors. It is my understanding  
3 that the infringing suture is used in connection  
4 with suture anchors that are manufactured and sold  
5 by Arthrex.  
6 Q. Do you know why the '446 patent was  
7 assigned in August of 2004, why that particular  
8 time frame was chosen?  
9 A. I don't recollect why it was assigned  
10 on that particular date or time frame.  
11 Q. Do you know what consideration was  
12 received?  
13 A. No, I do not.  
14 Q. Yet you signed the document, you don't  
15 know what consideration was received?  
16 A. That's correct.  
17 Q. Who is Lawrence Rickels?  
18 A. Lawrence Rickels is an attorney who is  
19 employed in the Johnson & Johnson law department.  
20 Q. Do you know why Lawrence Rickels is  
21 signing on behalf of DePuy Mitek Inc.?  
22 A. Presumably because he is an assistant  
23 secretary of DePuy Mitek.  
24 Q. Do you know if Ethicon has assigned  
25 any other patents to DePuy Mitek?

Page 157

1 GOODWIN  
2 A. No, I do not know.  
3 Q. Do you know whose idea it was to  
4 transfer the '446 patent from Ethicon to DePuy  
5 Mitek?  
6 MS. MALINOSKI: Assumes facts not in  
7 evidence, vague.  
8 A. I don't think it was one individual's  
9 idea.  
10 Q. Do you know who was involved with the  
11 decision?  
12 A. Counsel was involved in the decision  
13 to assign the patent.  
14 Q. Did that include yourself and  
15 Mr. Rickels?  
16 A. It would have included myself. I  
17 don't believe it would have included Mr. Rickels  
18 in particular.  
19 Q. Do you recall any other individuals  
20 besides yourself that were involved in the  
21 decision to transfer the '446 patent from Ethicon  
22 and DePuy Mitek?  
23 A. Counsel for Woodcock Washburn, as well  
24 as Richard Skula who was a colleague of mine and  
25 who works in my group.

40 (Pages 154 to 157)